Teachers' Guide
Canada and the law of the sea

Guide de l'enseignant
le Canada et le droit de la mer

About this kit

Introduction to the Law of the Sea:
Adaptable to any age or interest group.

Secondary School Level:
Documents, highlights and discussion points to stimulate interest in Canada's role in the development of a new international Law of the Sea.

University and/or General Research:
Specific concepts and problems and some examples of current issues of international law of particular importance to Canada.

Historical Perspective:
A detailed account of three United Nations Conferences on the Law of the Sea.

West Coast Tankers Simulation Game:
An exercise designed to show what it is like to negotiate a complex international agreement with different interest groups trying to convince the negotiating governments to do different things. It is drawn around a real-life issue — environmental protection for Canada from the impact of U.S. tankers carrying oil from Alaska to the lower 48 states, as viewed in the summer of 1977. This is only a bilateral negotiation, yet it illustrates how complex the Law of the Sea talks are when almost 150 states are involved. The organizer must have a thorough knowledge of the background and rules of play, in order to help participants over their initial confusion, but no extra materials should be required apart from the Law of the Sea Resource Book.

Dans ce dossier...

Introduction générale au droit de la mer:
S'adresse sans distinction d'âge à tout public.

Niveau secondaire:
Documents, points saillants et sujets de discussion destinés à stimuler l'intérêt pour le rôle joué par le Canada dans l'élaboration d'un nouveau droit de la mer.

Université et travaux de recherches::
Notions et problèmes particuliers et exemples de questions d'actualité du droit international ayant une importance particulière pour le Canada.

Perspective historique:
Compte rendu détaillé des trois Conférences des Nations Unies sur le droit de la mer.

Navires-citernes de la côte ouest - simulation
Jeu destiné à faire saisir en quoi consiste la négociation d'un accord international complexe lorsque divers groupes d'intérêt font pression pour gagner à leur cause les gouvernements intéressés. On s'inspire d'un fait vécu - la nécessité, telle qu'on la percevait à l'été de 1977, de protéger l'environnement canadien contre les manoeuvres des navires-citernes américains effectuant le transport du pétrole de l'Alaska vers les 48 États au Sud du Canada. La négociation, même bilatérale, donne une assez bonne idée de la complexité des pourparlers sur le droit de la mer, auxquels prennent part près de 150 États. L'animateur doit avoir une bonne connaissance du sujet et des règles du jeu de façon à pouvoir aider les participants à surmonter toute confusion initiale, mais il ne devrait pas être nécessaire de consulter d'autres documents que les Notes d'information sur le droit de la mer.

Ce dossier est disponible en français sur demande

This dossier is available in English on request.

Secondary School Level

External Affairs Canada
Affaires extérieures Canada

Teachers Guide/Secondary Level

Canada and the Law of the Sea

File 1 - The Deep Seabed-Minerals
File 2 - 200-Mile Economic Zone
File 3 - Marine Environment

The Law of the Sea: A Pandora's Box

The United Nations Law of the Sea Conference has undertaken the enormous task of creating what will be in effect a constitution of the oceans. It is not surprising therefore that certain complex issues have been raised which have proved difficult and in some cases controversial. Some examples of these questions are listed below. They provide a focal point for further, in-depth, research on the whole area of the Law of the Sea.

Reference

(1) The concept of the Common Heritage of Mankind is something new in international relations. Does a body like the United Nations have the right to declare such a large part of the earth the common property of all mankind and prevent the kind of "free" exploitation of resources that occurred in the past?

Reference Book
Pages 29, 31
Page 43

File 1 - Who's to mine the deep seabed?

(2) The 200-mile "economic zone" idea is an attempt at compromise between those states which want the greatest freedom of the seas and those which want the maximum amount of coastal state jurisdiction over the seas. If the Conference fails and a large number of states declare a 200-mile territorial sea instead of an economic zone, what effect could that have on world peace?

Reference Book
Press Conference
Pages 91-116 and
Page 126
File 2 and Reference
Book Page 32

.../2

(3) The health of the world economy depends overwhelmingly on international trade, most of which moves by sea. Many shipping states fear that granting the coastal state great powers to combat pollution of the marine environment would have a deleterious effect upon freedom of navigation. Is this a valid fear? Does the world community have to accept some degree of pollution in return for freedom of navigation and immediately healthier national economics?

Reference Page 15 Background Notes

Refer to Page 68

File 3 - Protection of the Marine Environment

(4) The landlocked and geographically disadvantaged countries (LL and gds) at the Law of the Sea Conference have pushed for preferential rights to fish within the fishing and economic zones of the coastal states. Should the coastal state grant the LL and gds states these rights, similar to those of its own fishermen and over those of the traditional fishing states which have in many cases fished these areas for centuries? What trade-offs could they demand from the landlocked states?

Reference Page 10 Background Notes

(5) There is a group of states with continental shelves that extend beyond 200 miles. Under the Geneva Convention of 1958 such states have a right to claim jurisdiction over the continental shelf out to the limit of "exploitability". These states wish to maintain this right and have it incorporated in the Law of the Sea treaty. They are vigorously opposed by many other states, which want 200 miles to be the limit of national jurisdiction and want anything beyond 200 miles to be part of the common heritage. Who is right?

Reference Page 13 Background Notes

(6) There are a number of defence issues at stake in the Conference, such as free passage through straits, marine scientific research, and jurisdiction over the continental shelf. What are the military implications of the above issues?

Reference Book
Page 17 B.N.
Page 13 B.N.
Page 23 B.N.

File 1

Who's to mine the deep seabed?
International bureaucracy...
or the fastest gun in the West?

Many of the developing nations want all mineral-resource exploration and exploitation activities in this international area, including scientific research, to be carried out by an international seabed authority and not by individual states. However, the high cost of seabed exploration and exploitation would be beyond the immediate fiscal and technical means of any such authority. Therefore, at least at first, joint ventures and other forms of collaboration between the authority and individual contracting states may be necessary.

Reference Book
Page 24
Background Notes

Several industrialized nations want a simple licensing scheme, which would allow them to go ahead on their own with the authority's role largely confined to issuing and registering the necessary licences.

Canada and a major group of other countries advocate that the role of the international authority be defined in a way that helps narrow the gap between the "have" and "have not" countries, rather than widening it.

File 1

In the Canadian view there should be a mixture of licensing and sub-contracting by the authority, as well as direct exploitation by the authority itself when it acquires the means and know-how. This approach attempts to satisfy both long-term needs of the developing countries and the short-term demands of technologically advanced, resource-hungry nations.

Reference Book Assessment Page 127

Summary

The establishment of an international authority is an attempt to develop the first international management system for some of the resources of the planet earth, based on principles of sound conservation, rational development and equitable distribution of benefits.

"The concept of the common heritage of mankind represents an extremely radical, novel and imaginative approach. While the waters superjacent to the international seabed area may continue to be subject to the laissez-faire doctrine of freedom of the high seas, except as amended by international fisheries, conservation, environmental and disarmament treaties, the seabed below and its resources will be subject to a regime of international management, governed by a new international authority." The potential implications of this new concept are truly far-reaching. It can reshape our thinking of how to live together in harmony, sharing instead of competing for finite resources.

Reference Book Page 31

The seabed and its resources constitute the "common heritage of mankind" and belong to everyone. This is the world's first attempt to develop an international management system involving both the public and private sector to develop some of the earth's finite resources.

Class simulation:

Each team (2 or 3 people) becomes the delegation of one of the following countries: Sweden, Austria, Brazil, Niger, Romania, Nigeria, Australia, U.S.A., Canada, Japan. Develop a national position on "The heritage for all mankind theory". Form three groups then try to work out a consensus.

Questions:

(1) What kind of trans-national corporations or consortia would be interested in the deep seabed? In what way can they influence the various State votes at the United Nations in order to protect their tradional modus operandi?

(2) Do countries only with the technological capability have rights to determine who and how the world's deep seabeds should be exploited?

(3) Do the developing countries have the right to prohibit mining of the deep seabed until they are able to compete for their share?

(4) Do you agree that the Canadian-advocated mixture formula is a prelude to a new inter-national order?

File 2

The 200-Mile Economic Zone Concept

The idea of an economic zone originated from the patrimonial sea proposals put forth by among others, certain Latin American states...
The proposals all had in common the same basic elements, namely: The sovereign rights of a coastal state over the resources of both seabed and the water column - that is to say, both the living and non-living resources - out to a distance of 200 miles, coupled with certain defined and restricted jurisdictions for the purposes of preserving the marine environment and controlling scientific research.

Reference
Page 32

Page 16

This proposal, however, was considered radical and it remains to some extent controversial, both in doctrinal and in more practical terms. The major maritime powers continue to assert that the waters of the economic zone have the status of high seas, while some states consider them as quasi-territorial. The majority view, however, is quite clearly that the waters of the economic zone are neither high seas nor territorial sea but have a status incorporating some elements of each, constituting, in fact, a totally new legal regime.

File 2

There is criticism of the 200-mile economic zone concept on the grounds that it divides up large portions of the world amongst coastal states. Yet, in fact over 90% of the peoples of the world reside in coastal states, and coastal states comprise the majority of the states of the world. This is not to suggest that the legitimate interests of the landlocked states should be overlooked. On the contrary, these landlocked states must be given equitable treatment in the new emerging regime...and the coastal states must accept that they owe a duty to reflect the interests of states which do not have a sea coastline.

Reference Book
Page 126
Assessment and
Press briefing
Pages 110-111

Summary:

Canada's position is that coastal states should have the sovereign rights over the resources of both seabed and water column out to 200 miles; and jurisdiction over scientific research and conservation.

Canada Today 5/8
Minerals - pages 3 & 4

Questions:

(1) The economic zone concept has raised many complicated problems. Is there a simpler way to protect each country's marine environment?

(2) The 200 miles seem to extend the ownership areas of coastal states. Is this a fact in law?

(3) Landlocked states have no such potential for protectorate territory yet their rivers take fish and minerals down to the sea. What rights does this give them in the deep seabed and the offshore fishing?

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(4) What happens when the economic zones of two states overlap?

(5) What is the difference between the following: territorial sea; high seas; economic zone?

(6) Why 200 miles? What's magic about that number?

File 3

Protection of the Marine Environment

Land-based sources of marine pollution account for about 80% of the total. The Law of the Sea Conference concentrates chiefly on pollution from shipping and mineral exploitation of the seabed.

Pollution from ships, especially ships flying the "flag of convenience", abuse the freedom of the sea by registering in states which acknowledge no responsibility for their actions. This negates any internationally agreed standards for the preservation and protection of the marine environment which otherwise could be effectively enforced by both flag and coastal states.

Canada has advocated that coastal states should be empowered to adopt and enforce their own anti-pollution standards over and above international rules when necessary - that is where exceptional conditions prevail such as in areas characterized by vulnerable ecology, unusual navigation hazards or especially heavy concentration of shipping, and where internationally agreed rules do not adequately provide for these conditions. This Canadian concept would apply not only in territorial waters, but also within areas of coastal jurisdiction beyond, where these special conditions prevail.

Canada Today 5/8
Page 6-7

File 3

A number of states, mainly the important shipping nations, are opposed to this view. They fear that such jurisdiction would allow a coastal state to interfere indiscriminately with navigation. Accordingly, these states favour a system of exclusively international rules and standards to be enforced mainly by the state of ship's registry - not only on the high seas, but at least according to some countries, in the territorial waters of coastal states as well.

Many of the developing coastal states favour the Canadian position which advocates national jurisdiction over potential pollution problems within the 200-mile economic zone.

Reference
Page 19 B.N.
Page 138 Canada and Law of the Sea

Summary

Canada believes that the greatest practicable degree of harmonization of anti-pollution standards is essential for the management needed to ensure preservation of the marine environment throughout the world. This approach, designed to prevent marine pollution, would temper the old exclusive rights of both coastal and flag states. It would ensure recognition of the fact that clean seas are at least as important as free seas. Under appropriate safeguards this concept should harm the interests of no state and protect the interests of all.

Questions:

(1) Discuss the differing points of view of the shipping states and the coastal states.

(2) Do the coastal states have the right to protect their shores by introducing safeguards that might add to the cost of operation by shippers?

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Should this cost be borne equally? How could this be monitored?

(3) How do "flags of convenience" allow offending ships to escape penalty for pollution? Why? What would happen if there were no "flag-of-convenience" states?

(4) What would happen if a ship polluted a "flag-of-convenience" state shoreline?

(5) Land-based sources account for 80% of marine pollution. List six major pollutant sources in Canada.

(6) Could the "anti-pollution standards", over and above international rules as suggested by the Canada concept, ever constitute a regime of "squatters' rights"? What appropriate safeguards could be introduced?

University and/ or General Research

Quelques exemples de questions courantes de droit international d'une importance particulière pour le Canada

Some Examples of Current Issues of International Law of Particular Importance to Canada

Ministère des Affaires extérieures
Bureau des Affaires juridiques

Octobre 1977

Department of External Affairs
Bureau of Legal Affairs

October, 1977

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DIPLOMATIC AND CONSULAR PRIVILEGES AND IMMUNITIES

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Le gouvernement du Canada a établi par le Décret C.P. 1976-2233 du 14 septembre 1976 un programme de subventions aux municipalités et aux provinces pour tenir lieu des taxes et des coûts d'amélioration locale sur certaines propriétés utilisées à des fins consulaires.

Après avoir établis les mécanismes administratifs appropriés, les autorités fédérales ont informé, le 1er avril 1977, les autorités provinciales et les municipalités intéressées de la mise en marche de ce programme. Le programme a pour but de compenser à l'échelle du pays les exonérations de taxes accordées par les municipalités et qui résultent des obligations internationales du Canada contenues dans la Convention de Vienne sur les relations consulaires, ratifiée par le Canada en 1974.

Les subventions s'appliquent aux immeubles dont les gouvernements étrangers sont les propriétaires et qui servent de bureau consulaire ou de résidence au chef de poste consulaire de carrière. Elles s'appliquent de même à la délégation commerciale d'un pays du Commonwealth et à la résidence du délégué commercial lorsque ce dernier a le statut de les fonctions d'un chef de poste consulaire.

Les exonérations sur les propriétés consulaires valent uniquement pour les locaux ou les parties des locaux qui servent effectivement aux fonctions consulaires. Les immeubles ou les parties d'immeubles qui servent à des fins autres que les fonctions consulaires, telles que les activités commerciales de nature lucrative ou les programmes d'enseignement de langues destinés au public ne sont pas exonérés. Comme par le passé, les autres propriétés consulaires et résidences appartenant à des gouvernements étrangers demeurent sujettes aux taxes foncières.

Le ministère des Affaires extérieures administre le programme en collaboration avec le ministère des Finances.

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On June 29, 1977, the Royal assent was given to the Diplomatic and Consular Privleges and Immunities Act. The enactment of legislation in that field by the Canadian Government was the natural consequence of Canada's ratification, in 1966, of the Vienna Convention on Diplomatic Relations and its adhesion, in 1974, to the Vienna Convention on Consular Relations. The purpose achieved in enacting domestic legislation in that field is to give greater certainty to the law governing the status of foreign diplomatic and consular personnel who are accredited to Canada.

The Act enumerates the Articles of the two Vienna Conventions establishing or relating to specific privileges and immunities, including those which may affect the rights of private persons, as distinct from those Articles which are purely formal and which create only obligations between governments. In matters of immunity, it is important to note, at the same time, that the persons to whom these immunities are accorded are not above the law. Under international law they remain under the duty to respect the laws and regulations of Canada. This obligation is formally stated in Article 41 of the Vienna Convention on Diplomatic Relations and Article 55 of the one on Consular Relations. Failure to observe Canadian laws and regulations may lead to formal representations to the Government of the sending State and ultimately, in serious cases, to the expulsion from Canada of the person concerned.

While recognizing, at the domestic level, the privileges and immunities provided to diplomatic and consular personnel by the two Vienna Conventions, the new legislation enables the Canadian Government, when any of the provisions of the Convention are not being fully applied to Canadian representatives abroad, to apply similar restrictions to the representatives in Canada of the foreign government concerned. A provision of this kind was considered desirable to give the Canadian Government the leverage it would need to negotiate a settlement to any dispute which might arise over the application of the Convention.

Also, since the provisions of the two Conventions apply to representatives of all countries, with the enactment of the new legislation, there was no longer a need for special legislation concerning representatives in Canada from Commonwealth countries. For this reason the Diplomatic Immunities (Commonwealth Countries) Act was repealed.

Finally, the recent legislation relates to the diplomatic and consular missions of other countries in Canada and to members of the staff of such missions only. It does not relate to the treatment which Canada may give to international organizations, including representatives of member states or others who may enter Canada to attend international conferences. This subject remains covered by the Privileges and Immunities (International Organizations) Act.

UNITED NATIONS CONFERENCE ON TERRITORIAL ASYLUM

As a result of a resolution of the United Nations General Assembly, the Secretary General, in co-operation with the United Nations High Commissioner for Refugees, convened a Conference on Territorial Asylum that took place in Geneva from January 10 to February 4, 1977. The purpose of the Conference was to consider and adopt a convention which would set standards for the protection and admission of persons fleeing persecution who are not covered by the 1951 Convention on Refugees. The Conference, however, did not meet its objectives and at the end of four weeks had completed preliminary work on only five of a possible twelve to fifteen Articles of the Convention. The basic problem was a fundamental difference of opinion between the geographical groups at the Conference, roughly the Western and Latin American countries on the one hand and the Asian and Socialist countries on the other hand. The former group, including Canada, while desirous of maintaining the sovereign rights of the State, viewed the Convention as a means of ensuring that individuals fleeing persecution are accorded every possible protection from arbitrary rejection or return to countries of persecution. The latter group, however, was more concerned with reiterating the sovereign rights of the receiving States rather than those of the individual.

At the end of the session, the Conference adopted the following recommendation:

> "The United Nations Conference on Territorial Asylum
>
> Having been unable to carry out its mandate within the allocated time,
>
> 1. Considers that efforts to draft a convention on territorial asylum should be continued;
>
> 2. Requests the Secretary General of the United Nations to transmit the report of this Conference to States;
>
> 3. Recommends that the General Assembly of the United Nations at its thirty-second session consider the question of convening at an appropriate time a further session of the Conference."

In assessing future action to be taken, in reconvening the Conference, the following considerations are relevant.

At the international level, Canada's record in dealing with refugees compares favourably with that of the great majority of the countries of the world. At the internal level, Canada's new immigration legislation incorporates for the first time provisions relating to the selection of refugees abroad as well as provisions outlining in detail the procedure to be followed in dealing with persons seeking asylum at the borders or while in Canada. These provisions reflect the present Canadian obligation under the Convention on Refugees and are more generous than might be anticipated from a Convention on Territorial Asylum if adopted at the present time with the spirit that prevailed in Geneva.

NUCLEAR NON-PROLIFERATION AND SAFEGUARDS

During the past three years Canada has been renegotiating its nuclear cooperation agreements with its nuclear customers, a process begun late in 1974 following a review of Canadian nuclear policy in the wake of the Indian nuclear test. Agreement was reached last year with two uranium customers, Finland and Spain, and two reactor customers, South Korea and Argentina, and this year a Nuclear Cooperation Agreement was signed with another uranium customer, Sweden. Discussions have proceeded with EURATOM, Japan and Switzerland.

At the same time Canada has recognized that its bilateral efforts on the non-proliferation front would be ineffective unless the internationally acceptable minimum level of safeguards could be raised to a parallel level of stringency. To promote such international standards Canada has actively supported the activities of the International Atomic Energy Agency and has met with the nuclear supplier nations to discuss safeguards policy. In addition, Canada intends to participate in the International Nuclear Fuel Cycle Evaluation proposed by President Carter at the London Summit which, over the next two years, will examine means of using nuclear energy to meet world energy needs while avoiding the danger of the spread of nuclear weapons.

The Government has continued to pursue its policy, outlined by the Minister of Energy, Mines and Resources on December 20, 1974, of selling uranium and CANDU reactors under strict safeguards to selected customers. Furthermore, on December 22, 1976, the Secretary of State for External Affairs announced in the House of Commons that shipments to non-nuclear-weapon States under future contracts will be restricted to those that ratify the Non-Proliferation Treaty or otherwise accept international safeguards on their entire nuclear programs. It follows from this policy that Canada will terminate nuclear shipments to any non-nuclear-weapon State that explodes a nuclear device. This policy is in keeping with Canada's commitments under the Treaty on the Non-Proliferation of Nuclear Weapons to export nuclear items only under safeguards and to ensure that the benefits of lower cost energy which nuclear power promises is shared by all nations.

CANADA TREATY SERIES

The Canada Treaty Register, maintained by the Treaty Section, Legal Advisory Division, reports that action was taken during the past 12 months (July 1, 1976 - June 30, 1977) in connection with 29 multilateral and 55 bilateral agreements.

This Section continues to provide answers to a great number of written and oral questions from other divisions, other departments of government, foreign governments and the general public concerning treaties to which Canada may or may not be a party.

A cumulative index to the Canada Treaty Series covering the years 1965 through 1974 was completed and published. In addition 15 individual treaties which entered into force in 1975 and 30 treaties in the 1976 Series were published in the Series. 10 treaties in the 1976 Series are now in the process of publication. The preparation of the 1977 Series is underway.

Notice of the publication of the cumulative index and of individual treaties appear in the Daily and monthly Checklist of Government Publications, available from the Publications Centre, Supply and Services Canada, 270 Albert Street, Ottawa, K1A OS9. Individual copies of treaties may also be purchased from that Centre.

ENVIRONMENTAL LAW

There were several significant developments in the field of environmental law, both at the multilateral and bilateral level, during 1977. At the urging of Canada, the Governing Council of the United Nations Environmental Programme established a working group of experts on environmental law. The group has been given a broad mandate to review the work undertaken in this field by UNEP to date and to develop a programme of work in the environmental law field by concentrating on areas, such as liability and compensation for environmental damage, which are in need of study and subsequent action. By establishing this committee, UNEP has taken a positive step in institutionalizing environmental law at the multilateral level, in accordance with Principles 21 and 22 of the Stockholm Declaration on the Human Environment, directly related to the development of international law of the environment.

The working group on environmental law can be viewed as a recognition by UNEP of its responsibilities in this field. At the first meeting of the working group in Geneva in September, the Canadian delegate was elected to serve as its chairman for the first two-year period. The group decided to select as its first topic for study the field of liability and compensation for damage from marine pollution caused by offshore mining on the continental shelf. In carrying out its mandate the group will take fully into account the relevant work of the U.N. Law of the Sea Conference.

An environmental disaster, late in 1976, focused public and governmental opinion during 1977 on the need for stricter international anti-pollution standards. In December 1976, the Liberian tanker, the "Argo Merchant", spilled 7.5 million gallons of oil off Nanucket Island and this spill was followed by a rash of further spills in United States' coastal waters. Newly-elected President Carter responded a short time later with a call for stricter anti-pollution standards to abate the threat of marine pollution from ships. The Carter Administration presented to Congress a package proposal on marine pollution, which concentrated on six areas:

ratification of international conventions for the prevention of pollution from ships; reform of domestic and international ship construction and equipment standards; improvement of international crew standards and training; development of the domestic tanker boarding program; approval of domestic comprehensive oil pollution liability and compensation legislation, and improvement of the ability of USA federal agencies to respond to oil pollution emergencies. In keeping with these proposals, the USA called on the Inter-Governmental Marine Consultative Organization (IMCO) to schedule an early international conference to consider measures to improve tanker safety. This Conference will be held in London in February 1978, to consider draft protocols to the 1974 Safety of Life at Sea Convention and to the 1973 Marine Pollution Convention.

The reference to comprehensive oil pollution liability and compensation legislation was of particular interest to Canada since such legislation would supercede the Trans-Alaska Pipeline Authorization (TAPA) Fund under which Canadian claimants were guaranteed access to a $100 million marine pollution claims fund on the same basis as residents of the USA who had suffered damage from the movement of Alaska oil. The U.S. Administration version of the comprehensive act continued to give Canadians access to similar funds but another version of the bill required Canada to provide reciprocal arrangements for potential USA claimants. Canada has expressed its concern to the USA about this provision and the U.S. Administration has supported Canada's position.

The USA, for its part, is interested in obtaining access for its citizens to the relevant remedies available under Canadian legislation which deal with liability and compensation for marine pollution damage, in particular, the Canada Shipping Act and the Arctic Waters Pollution Prevention Act. In the context of Canadian drilling in the Beaufort Sea, Canada has advised the USA that provisions of Canadian legislation are being reviewed to provide potential American claimants reciprocal access to Canadian legislative remedies.

In June of 1977, the Cabinet authorized offshore exploratory drilling in the Beaufort Sea for the next three years, subject to annual reviews, more stringent conditions and improved monitoring and surveillance. The arrangement established in 1976 to compensate American claimants in the event of an oil spill was continued for the 1977 season. This is an arrangement in which the operators have entered

into an agreement with the Canadian Government, guaranteed by bond, to provide up to $10 million to USA claimants. Under the provisions of the Arctic Waters Pollution Prevention Act, some $30 million is available to Canadian claimants in the event of an oil spill. Canada and the USA agreed in the summer of 1977 to extend the operation of the Joint Oil Spills Contingency Plan to the trans-boundary waters of the Beaufort Sea.

West coast environmental issues continued to be an active area in 1977 with the start of Alaska tanker traffic carrying oil to the southern 48 states along British Columbia's coast. For the past five years, Canada has expressed opposition to large-scale tanker movements through the Strait of Juan de Fuca en route to and from Puget Sound. In 1974 the Canadian and USA governments agreed to undertake negotiations for a general plan to reduce environmental risks in the area. A voluntary vessel traffic management scheme was introduced in the Strait in 1974 followed by a voluntary traffic separation scheme in 1975. An oil spill contingency plan, similar to the one which was introduced in 1977 in the Beaufort Sea, has been operational since 1975. Discussions were held with USA officials throughout 1977 to make the voluntary vessel traffic management/traffic separation scheme mandatory for all ships navigating the Strait.

While the west coast still remains a problem area in Canada/USA environmental relations, a number of major positive developments took place in 1977 with regard to the Garrison Diversion Unit. In the late 1960's the USA began construction of an irrigation project in North Dakota which, in the opinion of Canada, would seriously degrade the waters of the Red River in Manitoba to the injury of the health and property in Canada, thus violating the Boundary Waters Treaty of 1909. After several years of exchanges, President Carter in April 1977, recommended to Congress that the project be markedly reduced in scale, eliminating virtually all parts of the project affecting Canada. Although Congress voted full funding for Garrison despite the President's recommendation, a report of the House Appropriations Committee recognized the importance of considering the IJC's study of the project, and noted that construction carried out in the budgetary period in question would accordingly not deal with works potentially affecting Canada. The U.S. Government also reiterated its commitment regarding construction of works potentially affecting Canada, and added that these undertakings were "in keeping with the spirit of mutual understanding and forebearance which has characterized and will continue to characterize the efforts

of the two governments in addressing trans-frontier pollution matters." In September of 1977, the IJC released its long-awaited report and concluded that the construction and operation of the Garrison Diversion Unit in North Dakota, as envisaged, would cause significant injury to health and property in Canada as a result of adverse impacts on water quality and would cause adverse and irreversable impacts on some of the important biological resources in Manitoba. The IJC concluded that portions of the project potentially affecting Canadian waters should not be constructed unless and until the two governments agreed on measures to resolve this problem. These recommendations are being studied by the two Governments.

INTERNATIONAL FISHERIES LAW

In retrospect, 1976 can be considered the year that the international community generally accepted the theoretical concept of increased rights and duties of the coastal state wihin a 200-mile limit. By contrast, but complementary to previous development, 1977 saw the principle incorporated into numerous arrangements on unilateral, bilateral and multilateral levels. The 200-mile principle permeated nearly every aspect of fisheries policy and necessitated the re-evaluation and amendment of traditional fishing patterns and agreements worldwide.

For Canada, the 200-mile concept assumed a substantive character with the extension of fisheries jurisdiction by Order-in-Council on January 1, 1977. The Government considered that extension was necessary in order to ensure rational management of the dwindling fish stocks being decimated by the intensive fishing practices of foreign fleets. This action would ensure the survival of coastal communities heavily dependent on the fishery for their livelihood and permit the rebuilding of depleted fish stocks. As a result of the extension, Canadian officials alone are empowered to determine the level of fish stocks within the zone, to fix the total allowable catch for each stock and area, to assess the needs of Canadian fishermen and to assign, taking into account conservation measures, the surplus to foreign countries which have traditionally fished in Canadian waters.

To complement this extension of jurisdiction, Canada has continued to negotiate bilateral agreements with those countries that have customarily fished off its coasts. Canada already has agreements which contain recognition of the Canadian 200-mile zone with Norway, Poland, the USSR, Spain and Portugal. Additional agreements, known as "second generation" treaties to differentiate them from those negotiated before the extension of jurisdiction, were reached with Cuba, Romania, the German Democratic Republic and Bulgaria. These countries are permitted to fish within the 200-mile limit under a Canadian system of licences and annual quotas for stocks surplus to Canadian requirements. The importance of these treaties for Canada lies in the fact that the parties recognize the special interest that Canada has in the areas adjacent to and immediately beyond the 200-mile limit, known as the Flemish Cap and the tail of of the Grand Banks. Canada now has agreements with all nations fishing off its coasts except Japan and the European Common Market. A timetable for negotiation is being

established with the remaining two.

With the implementation of the 200-mile limit, and the wide-spread belief that ICNAF, despite being the most efficient of the international regional conventions, was only partially successful in retarding the decline of fish stocks, Canada took the initiative in suggesting that the time was propitious to negotiate a new convention to incorporate the jurisdictional realities emerging from the Law of the Sea Conference and to develop a framework for the international management of fisheries resources beyond 200-mile limits on the Atlantic coast. As a result, Canada hosted two preparatory sessions in March and June and a full diplomatic conference in October. Among other aims, Canada hopes that the new convention will incorporate specific reference to the Canadian special interest in the two areas beyond the 200-mile limit.

In a step to clarify the state of fisheries relations between Canada and the United States, the two governments signed the 1977 Interim Fisheries Agreement on February 26. The treaty stipulates that both countries will continue to permit fishing by the other in its zone and will make every effort to preserve the existing patterns in the reciprocal fisheries. Pending the settlement of maritime boundaries, interim measures of mutual restraint would be followed in boundary regions. Enforcement would be conducted by the flag state in the case of Canadian and American vessels; neither state would authorize fishing by third parties in boundary areas; and either party may enforce against third parties. To hasten the settlement of the maritime boundaries issue special high level negotiators were appointed by the two governments.

On the Pacific, Canada entered into negotiations with the United States to replace the 1930 Fraser River Salmon Treaty with one to encompass the entire coast. While generally retaining the organizational framework established by the earlier Agreement, the new treaty would update arrangements to take into account recent problems arising from conservation and enhancement programs. This complicated issue centres around the need to devise a flexible formula to ensure that salmon raised in one country's enhancement program are not all caught by the other. This disincentive to develop conservation programs must be rectified by establishing a fair and equitable escapement program in order that the benefits of conservation and management accrue to the correct party. Negotiations on this

have been progressing in Vancouver and Seattle.

In November, a full review of the International North Pacific Fisheries Commission (INPEC) will take place in Anchorage with the United States and Japan to assess the work of the Commission.

OUTER SPACE LAW

As a country with communications satellites in geostationary orbit and an active program in the field of remote sensing, Canada has a direct interest in the rational and progressive development of international law relating to outer space. The United Nations has provided a focal point for this process through its Committee on the Peaceful Uses of Outer Space and its Legal Sub-Committee. This Committee has been responsible for the development of the following international instruments relating to outer space: the 1967 Treaty on Principles Governing the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, the 1968 Agreement on the Rescue of Astronauts, Return of Astronauts and the Return of Objects Launched into Outer Space, the 1972 Convention on International Liability for Damage Caused by Space Objects and the 1975 Convention on Registration of Objects Launched into Outer Space.

At, its Sixteenth Session, held in New York from March 14 to April 8, the Legal Sub-Committee continued to consider, as a matter of high priority, the "elaboration of principles governing the use by States of artificial earth satellites for direct television broadcasting". The major outstanding questions facing this year's session were the issues of consent and participation, illegal broadcasts and program content. A recent development of particular relevance to the work of the Sub-Committee was the World Administrative Radio Conference (WARC) held in Geneva from January 10 to February 13, 1977. This conference developed detailed plans for the broadcasting satellite service in the 12 GHZ band for Europe, Africa, Asia and the South Pacific. Countries of the Americas are expected to conclude a similar detailed plan in 1983. The basis for these plans is Regulation 428 (a) of the Radio Regulations of the International Telecommunication Union which states, "In devising the characteristics of a space station in the broadcasting satellite service, all technical means available shall be used to reduce, to the maximum extent practicable, the radiation over the territory of other countries unless an agreement has been previously reached with such countries".

Put somewhat differently, the technical framework of the 1977 WARC was based on the general principle that

intentional coverage of one country by another country requires the agreement of the former.

At the 16th Session, Canada and Sweden, continuing their longstanding cooperation in this field, jointly introduced two working papers. The first paper contained a proposed preamble to the draft principles. The second paper was a revised draft principle on consultation and agreements which attempted to link the legal framework of the International Telecommunication Union (ITU) and especially the 1977 WARC, to a general principle on agreement. This text was consistent with earlier Canada/ Sweden proposals and ensured that the establishment of an international direct television broadcasting service by satellite could only take place with the agreement of the receiving state.

This compromise text represents, in the Canadian view, a responsible and workable balance between the need to facilitate the orderly development of an important new area of technology and the need to protect the sovereign rights of states to regulate their communications systems. Canada was pleased at the progress achieved both at the Legal Sub-Committee and the 20th Session of the parent committee, which met in Vienna from June 20 to July 1, 1977, in working toward a consensus on this text and the draft preamble. On the basis of these negotiations, it is hoped that it will be possible to conclude a full draft set of principles at the next session of the Legal Sub-Committee.

The Legal Sub-Committee in 1977 also continued its work on the legal implications of remote sensing of the earth from space. During the session six new draft principles were developed, three on the basis of common elements which had been identified at last year's session and three which were developed on the basis of new formulations. As well, a controversial text of a "possible draft principle" on permanent sovereignty over natural resources was also formulated.

The draft principles elaborated related to the following subjects: role of the United Nations, dissemination of information regarding impending natural disasters, duty to avoid detrimental use of remote sensing data or information, dissemination of technical information to developing countries, state responsibility for activities in the field of remote sensing, and right of a sensed state to access to data pertaining to its territory.

During negotiations in the Legal Sub-Committee, Canada has taken the position that the legal framework which is established to govern the activities of states engaged in remote sensing of the earth from space should facilitate the maximum cooperative utilization of remote sensing technology consonant with the need to safeguard legitimate national interests.

With respect to the latter consideration, the complexity of the issues involved in a legal analysis of remote sensing, together with rapidly advancing technology, make it difficult to foresee the precise manner in which states could, in the future, be adversely affected by remote sensing activities. For this reason, Canada, at the last session of the Legal Sub-Committee, introduced an informal working paper containing a draft text of a possible review clause for inclusion in the draft principles. Canada suggested that such a clause might constitute a useful safeguard in the draft principles whereby the Outer Space Committee or the General Assembly would periodically, or on demand of a specified number of member states, review the adequacy of the guiding principles on remote sensing. Such a clause would introduce an element of flexibility to the draft principles and would also provide a form of protection against possible problems o unforeseen detrimental effects of remote sensing activities. This question will be considered further at future sessions of the Legal Sub-Committee.

Although the 16th Session of the Legal Sub-Committee was to accord high priority to completing the draft moon treaty, very little progress was made at the session with respect to the major outstanding issues. These are:

1) the scope of the treaty, i.e. whether the draft treaty should relate only to the moon or should include reference to other celestial bodies;

2) the legal status of the natural resources of the moon, and of other celestial bodies, including the question of the possible future establishment of an international régime to govern exploitation of those resources when this becomes feasible; and

3) information to be furnished on missions to the moon.

Only three sessions of the working group were held this year, a large part of which were devoted to procedural matters. The situation with respect to the draft moon treaty therefore remains basically unchanged. On the one hand are a number of developing countries who continue to insist on a direct reference to the moon and its natural resources and other celestial bodies and their natural resources as the common heritage of mankind. These countries are also committed to the establishment of an international legal régime to govern the exploitation of such resources when this becomes feasible. On the other hand are those states which do not wish to place undue international legal restrictions on research and unforeseen future prospects for exploitation of the resources of the moon and other celestial bodies. Unless major changes take place in these positions, the prospects for progress on this item at the next session of the Legal Sub-Committee do not appear promising.

HUMANITARIAN LAW IN ARMED CONFLICT

The 1971 initiative of the International Committee of the Red Cross (ICRC) to update the provisions of the Geneva Conventions came to fruition in June 1977 when the Diplomatic Conference at its fourth session adopted two Protocols relating to the protection of victims of international armed conflict (Protocol I) and victims of non-international armed conflicts (Protocol II). The Protocols will be open for signature in December of 1977.

Four years of protracted and difficult negotiation have resulted in the adoption of two instruments which represent a significant, and in the case of Protocol II, an unprecedented and innovative development of international humanitarian law applicable in armed conflict. The basic rationale behind the Protocols was to revise the law of armed conflict in the light of technological and political changes which have greatly altered the conduct of modern warfare. To this must be linked the humanitarian motive which sought to extend the protection given to victims of armed conflict, particularly civilians. The Protocols also reflect elements in the current climate of international politics, particularly the concerns of the developing countries. This has led to the adoption of controversial articles whose focus is national wars of liberation and the related issues of colonialism and racism. The injection of these elements has significantly changed the traditional concept of the law of armed conflicts. One can therefore approach the Protocols, particularly the first, from three general and interrelated perspectives: the political, the humanitarian and the technical.

Protocol I

The Conference began its deliberations in three Committees on April 12 after an opening plenary session. The plenary reconvened on May 23 to consider the articles adopted by the Committees and sat until June 11 when the texts of the two Protocols were adopted.

Previous editions of Current Issues have dealt with articles adopted at the first three sessions of the Conference. This brief report will highlight those provisions adopted at the fourth session and attempt to identify the most significant aspects of the Protocols in terms of the important developments in this area of international law. The actual changes are many, the first

Protocol containing 102 articles, the second 28. These provisions will not be discussed in detail here as a full explanation of the modifications in the law would require an extensive comparison of the Protocols with the texts of the Geneva Conventions.

Political Considerations

Of those provisions which reflect changes in current thinking on international armed conflict, one of the most important is that which categorizes struggles for national liberation and self-determination as international conflicts. This follows a decision of the Conference, at its first session, to allow liberation movements to participate as observers and was also reflected in a subsequent decision to allow them to sign the Final Act. Further, the Protocol also revises the concept of combatants and broadens it to include what could be described as guerilla fighters. The requirements for such fighters to distinguish themselves from the civilian population and retain combatant status are minimal and were the subject of contentious debate at the fourth session.

Another innovative provision and one strongly advocated by the African delegations is one which denies mercenaries combatant or prisoner of war status, thus permitting their prosecution as war criminals. It should be noted, however, that the concept of the mercenary has been extremely limited and is defined in terms of six criteria which must be taken cumulatively in order for the provision to apply.

These provisions, as well as an earlier decision to include the practice of apartheid as a grave breach of the Protocol, indicate the extent to which the law of armed conflict has been affected by the current concerns of many of the developing countries.

Humanitarian Considerations: the Extension of Protection

Other significant changes relate to the definition of perfidy, inclusion of legal advisers in military units, the obligation to disseminate the Conventions and protocols within the armed forces and the civilian population, the responsibility of a commander for the acts of his subordinates, provision for the designation of protecting powers, (or allowing the ICRC to act as a substitute if no protecting power is so designated) and the establishment of a (voluntary) Fact-Finding Commission to look into alleged grave breaches of the Protocol or Conventions. On this

latter provision, the Canadian delegation was one of those which argued for a mandatory inquiry system but this proposal was strongly opposed by the socialist states and many developing countries and was subsequently rejected by the Conference.

In connection with those provisions relating to methods and means of combat, the Protocols extended the scope of protection to be enjoyed by both civilians and prisoners of war. For example, the Protocol contains extensive provisions on family reunion and on the protection of women and children. There are also special provisions for refugees and journalists. In addition, there are articles dealing with the protection of cultural objects, places of worship, objects indispensable to the survival of the civilian population, the natural environment, installations containing dangerous forces, non-defended localities and demilitarized zones. These provisions (and others) considerably extend the scope of protection offered by the conventions and will have the effect of limiting the freedom of military action.

In addition, the protection of those hors de combat, both civilian and military, has been broadened, particularly in terms of their treatment by an adverse party into whose hands they fall. Of special interest in this regard is an article entitled "fundamental guarantees" which represents a kind of mini-bill of rights for persons detained, interned or arrested for actions related to the armed conflict.

Technical Considerations

On a more technical level, the Protocol extends the scope of the law as it relates to medical and other assistance to the victims of armed conflict. It is in this area that technological advances have been reflected in humanitarian law. For example, the Protocol calls for the allocation of specific call signs and frequencies for medical aircraft. A technical annex to the Convention contains, among other things, provisions on the use of distinctive signals (light, radio and electronic) for medical units and transports.

The Protocol breaks new ground on protection of civilian medical units, i.e., medical personnel, transport

and equipment. It also contains new provisions on civil defence and relief to the civilian population. One of the more interesting articles in this area is a provision which limits and regulates the conditions under which medical experimentation, organ and tissue transplants and surgical operations can be carried out.

As can be seen, Protocol I covers a broad area. In its discussions, the Conference touched on a wide range of issues and had the task of amalgamating in one instrument, military, legal, technical and political considerations. It attempted to balance the factor of humanitarian assistance and protection with that of military necessity, to say nothing of the effort to reflect many of the prevailing preoccupations of contemporary international politics. It is not surprising, therefore, that this balance was not always struck to the satisfaction of all concerned.

Protocol II

The second Protocol, on internal armed conflict, represents an historic development in international humanitarian law as it regulates the conduct of an activity hithertofore immune to international regulation.

Since Protocol II concerns internal armed conflict, it is not surprising that many states, particularly from the Third World, regarded it with hesitation, if not hostility. On the other hand, another group of states, mainly Western European, were of the view that the second Protocol should, as far as possible, mirror the first. As the draft of this Protocol grew more extensive, opposition to it increased, to the point where, near the end of the fourth session of the Conference, there were doubts as to whether such a Protocol would succeed at all. As a result, an effort was made, thanks to the head of the Pakistani delegation, to present a revised, simplified and shortened draft of this Protocol. This draft was to a great extent modeled on an earlier Canadian proposal on Protocol II which had been submitted at a previous session of the Conference. The rationale behind the Canadian initiative was that since the Protocol was to deal with situations of internal conflict, it should be kept as simple and basic as possible, since, particularly from the point of view of the dissident side in the conflict, the technical facilities and personnel and

material resources required to apply the provisions of the instrument would be extremely limited. In the event, this view prevailed and although the results were less than many had wanted, they represent a real achievement in the establishment of a minimum but workable standard for the conduct of hostilities within one country.

Those who opposed the very idea of a Protocol II were motivated by a concern for national sovereignty and the fear of outside interference in the internal affairs of states. They would not subscribe to any instrument which could be interpreted as conferring any legal status on a dissident or break-away movement. Thus, unlike the first Protocol, the second contains no language which could be read as putting the two sides on an equal footing: expressions such as "parties to the conflict" or "combatants" are not to be found in Protocol II.

One of the most difficult aspects of this Protocol, both from the point of view of its negotiation as well, presumably, from that of its implementation, is the field of application. A non-international armed conflict is defined in part as one "which takes place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol". We are also told what a non-international armed conflict is not, viz "situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature". The point at which a particular conflict passes from the latter category into the first will be difficult to identify and there will inevitably be more than one view on this question. As in all international agreements, however, the effective application of this Protocol will depend on the good will of states and it is expected that most governments in this situation will see it as in their interest to apply the Protocol in order to ensure reciprocal treatment of members of their own armed forces and the civilian population who are in the hands of the dissident force.

Despite difficulties in application, the Protocol contains provisions of undoubted humanitarian value on the protection of the wounded, sick and shipwrecked and on the humane treatment of both civilians and detained members of

the armed forces. There are, for example, prohibitions on collective punishment, attacks on civilians or starvation or displacement of the civilian population. As in the first Protocol, objects indispensable to the survival of the civilian population and installations containing dangerous forces are protected.

One of the most significant aspects of the Protocol is its attempt to deal with the bitterness and revenge which seem the inevitable consequence of civil war. It calls upon the authorities in power, at the end of hostilities to "grant the broadest possible amnesty to persons who have participated in the armed conflict".

The second Protocol, like the first, requires that only two instruments of ratification be deposited before its entry into force. It was believed that as few procedural obstacles as possible should be placed in the way of the application of this development of international law which has as its object the alleviation of the plight of the victims of armed conflict.

Prohibition of Certain Conventional Weapons

A number of delegations were strongly of the view that the new Protocols should incorporate prohibitions on the use of certain weapons. Other delegations, including that of Canada, argued that the issue of the prohibition of weapons lay outside the scope of what has been called the Geneva law and was basically a disarmament question and thus within the competence of other international fora.

A separate committee (the Ad Hoc Committee on Conventional Weapons) was established to study this question. It did not, however, engage in the drafting of any provisions for consideration by the Plenary for inclusion in the Protocols. Instead, it discussed a number of proposals and working papers on the use of certain weapons which were considered appropriate for prohibition. These included incendiary weapons, weapons which produce fragments not detectable by X-ray and mines and booby traps. In addition, fuel air explosives and small calibre projectiles were considered. The Committee compiled a comparative table of these proposals which should prove useful in any future discussions of this question.

A number of delegations which were the most active proponents of having a weapons prohibition provision in Protocol I advanced a proposal which sought to establish an international committee whose function would have been to determine which conventional weapons should be prohibited. This proposal was approved in Committee but rejected by Plenary where it failed to obtain the required 2/3 majority.

The Plenary did, however, unanimously adopt a resolution calling for a special conference on weapons to be held by 1979. The UN Central Assembly has been given the responsibility of taking whatever further action is required to convene this conference.

INTERNATIONAL LEGAL MEASURES AGAINST TERRORISM

The past year has seen a renewal of efforts within the United Nations to come to grips with the issue of international terrorism and, in particular, the taking of hostages.

International terrorism was originally inscribed on the agenda of the United Nations General Assembly in 1972 by the Secretary-General, following the tragic events at the Munich Olympics. That year, the Assembly adopted a resolution that created an Ad Hoc Committee on International Terrorism. This Committee met only once, in 1973, its work being hindered from the outset by highly ambiguous terms of reference. In the face of strong resistance by certain African and Arab delegations to the introduction of international measures against certain categories of terrorist acts, the agenda item was tacitly permitted to remain inactive through the 1973, 1974 and 1975 General Assembly Sessions.

In 1976, at the 31st session of the U.N. General Assembly, the issue was revived as a result of an initiative by the Federal Republic of Germany relating to the drafting of a convention against the taking of hostages. This proposal called for the creation of a new committee to deal with this subject. At the same time, a number of Third World countries introduced a resolution which called for the reactivation of the Ad Hoc Committee on International Terrorism. Canada, although a member of this Committee, voted against this resolution in the belief that the mandate of the Committee was unsatisfactory and could even be used to provide justification for certain acts of terrorism.

The last session of the Ad Hoc Committee was held in New York from March 14 to 25, 1977. As in 1973, Third World delegations stressed the importance of studying the causes of international terrorism, which were generally attributed to policies followed by Israel and governments in Southern Africa. These delegations were also opposed to any proposals which might, in their view, affect the operations of national liberation movements. Canada and other Western delegations, on the other hand, stressed the need for the international community to develop specific

and concrete measures against all acts of international terrorism, regardless of motive, such measures to be based on the principle of "prosecute or extradite" contained in the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft, the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation and the 1973 Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents.

As a result of such divergent points of view on the work of the Committee, no progress was made of a substantive nature, nor was agreement reached on a future program of work.

The work of the Ad Hoc Committee on the Drafting of an International Convention Against the Taking of Hostages, which met in New York from August 1 to 19, 1977, met with only limited success. While the mandate of this Committee provided a sharper focus than that of the Ad Hoc Committee on International Terrorism, debate in the two Committees was strikingly similar. Most Arab delegations stressed that the question of hostage-taking was an integral part of the question of international terrorism and that its underlying causes should, therefore, be examined. The most serious divergence of views, however, as was clear even at the time of the establishment of the Hostage-Taking Committee, was the question of the scope of the convention and its application to national liberation movements. Various Arab and African delegations noted that unless a satisfactory solution was found to this question, it would be very unlikely that the Hostage-Taking Committee could make progress. Nevertheless, some debate of a substantive nature did take place on relevant legal matters such as preventive measures against hostage-taking, criminal sanctions, jurisdiction and extradition, raised in the draft convention submitted to the Committee as a basis for its work by the Federal Republic of Germany. While strong differences of opinion continue to exist on fundamental issues, the Committee adopted a resolution which recommends that its mandate be renewed for another year.

In approaching the work of the Committee, Canada believes that the groundwork for international cooperation in combatting the taking of hostages has been established by the 1970 Hague, the 1971 Montreal and 1973 New York Conventions. These instruments do, however, leave gaps which should be filled by the proposed new convention. This convention should build upon these precedents without duplicating or disturbing the existing and accepted international legal framework.

PRIVATE INTERNATIONAL LAW

The work of the Private International Law Section, as its name implies, involves matters of interaction between the domestic law of Canada, both federal and provincial, and the domestic law of foreign states. The volume of work of the Section has increased substantially during recent years, as a result of increased international travel for private and commercial purposes. There has been a marked increase in the service of legal documents originating in Canada on persons residing abroad and vice versa. Canada has civil proceedings conventions with 19 states for this purpose. However, even in the absence of a convention, the Section has often been successful in arranging for the service of documents abroad on behalf of the legal profession in Canada. In addition, the number of Commissions Rogatory for the taking of testimony in both civil and criminal matters abroad has increased. The Section assists both provincial governments and practising lawyers in this field. The Section also liaises between provincial governments and foreign governments on such matters as reciprocal enforcement of maintenance orders and foreign judgments. The demand for the authentication of signatures on legal documents required for use abroad has increased particularly with respect to the People's Republic of China, where Canadian companies are becoming commercially involved. Finally, requests for extradition and rendition of fugitive offenders to and from Canada have increased greatly, specifically between Canada and the United States of America in relation to drug offences.

In response to a growing number of requests from private groups and individuals concerned with inter-provincial and international adoption, the establishment of a National Adoption Desk and Central Registry was approved by the Conference of Welfare Ministers in Ottawa in February, 1975 and was announced by the Honourable Marc Lalonde, Minister of Health and Welfare Canada, at that time. The aim of the Desk is to standardize and harmonize both international and inter-provincial adoption policies and procedures. A member of the Section serves on the Committee whose role is (a) to formulate a Canadian policy and position on international adoption generally, and (b) to develop procedural standards and guidelines in connection with the Desk's operations. The nature and degree of involvement of our missions and consular officers abroad in the adoption process has been carefully outlined in accordance with international practice and accepted functions of diplomatic and consular posts abroad. The formal announcement

of the Desk's inter-provincial operations took place on August 15, 1975 and the international side of the Desk has been in operation since November 1, 1976. A member of the Section will continue to serve in an advisory capacity to the Desk for the foreseeable future. The Department has been able to provide assistance both in individual adoption cases and in obtaining information on adoption procedures in foreign countries.

At present Canada has extradition treaties with some 41 countries. Most of these treaties predate 1925 and the majority were concluded by Britain on behalf of Canada in the latter part of the 19th century. The process started by Canada in 1975 to up-date existing and conclude new extradition treaties is continuing. In April, 1977 an agreed extradition treaty text was initialled with Norway. In February, 1975 extradition treaty talks had been held with authorities of the Federal Republic of Germany. Since that time discussions have continued by means of diplomatic correspondence. In October, 1977 a further round of talks was held and a draft extradition treaty text was initialled. It is anticipated the treaty will be signed presently. Extradition treaty talks were held with France in October, 1976 and a further round of talks was held in October, 1977. An agreed text was concluded and initialled ad referendum.

The Section has become extensively involved in the international aspects of "civil kidnapping" or "child napping". The Extra-Provincial Custody Orders Enforcement Act, recommended in 1974 by the Uniform Law Conference of Canada, has been enacted by Manitoba, Prince Edward Island, Nova Scotia and Newfoundland. The Attorney General of Canada at the Federal-Provincial Conference of Attorneys General held at Halifax in October, 1975 urged all provinces to adopt similar legislation. The problem of civil kidnapping was discussed at the meeting of Commonwealth Law Ministers held in Winnipeg in August, 1977. It was agreed that an early examination be given to greater co-operation in the enforcement of custody orders, particularly as criminal proceedings are generally unsuited for use in a family context. The delegates emphasized that their concern was for the welfare of the children and that the examination of a Commonwealth scheme could reduce the number of such distressing incidents.

As an example of the work of the Section an interesting case arose recently when a Canadian born child was taken to Germany by his German citizen mother without the knowledge and/or consent of his Canadian father. Since that time the father has been granted custody of the child by order of the Ontario courts. Because the Order is ineffective in Germany the father was forced to defend a custody action commenced by his wife in that country. The case was complicated by a series of court proceedings through the Amtsgericht and Landgericht in Berlin; first, on the issue of jurisdiction and, secondly, on the substantive issue of custody. On November 9, 1976 the Berlin Supreme Court granted custody of the child to the father and ordered that the child be returned over to him and returned to Canada. In reaching a decision the Berlin court took cognizance of the 1961 Hague Convention concerning the powers of authorities and the law applicable to the protection of infants. The present status of the case is that the mother and child have apparently gone into hiding. On January 14, 1977 an arrest warrant was issued against the wife. The Berlin police have as yet been unable to locate the wife and child. At present the Department is involved in about 20 cases of "child napping".

In the past year, Canada has agreed to treaties on the exchange of prisoners with the United States and with Mexico. The purpose of these treaties is to promote the rehabilitation of offenders by enabling them to serve sentences in their own countries. In each case, the consent of the offender as well as the approval of the authorities of the two governments is required.

The treaties provided for the exchange of prisoners, probationers and parolees under the responsibility of the federal governments. However, provinces and states may participate in the arrangements with the consent of the federal governments.

Upon transfer, the original sentence will carry over to the new confinement preserving deductions for good behaviour, pre-trial confinement, etc. The transfering state retains a power to grant pardon or amnesty. However, with these exceptions, the execution of the sentence is to be carried out according to the rules and practices prevailing in the state to which the offender is transferred. No offender shall be transferred until the time for leave to appeal against conviction or sentence has expired an while proceedings by way of appeal or collateral attack are pending.

The Treaty on the Execution of Penal Sentences between Canada and the United States was signed on March 2, 1977 and the Treaty between Canada and Mexico is expected to be signed in November 1977. Both Treaties are subject to ratification. A Bill to provide for the implementation of such treaties was introduced into the United States Senate and

House of Representatives in April 1977. It is expected that similar enabling Canadian legislation will be put before Parliament in the fall of 1977.

Canada is pursuing the possibility of entering into similar treaties with other interested countries. At the present time, there are approximately 250 Canadians in foreign prisons and 575 non-Canadians in Canadian federal prisons.

Troisième Conférence des Nations Unies sur le droit de la mer:

Sixième session

Evaluation du Canada

Introduction

La Sixième session de la troisième Conférence des Nations Unies sur le droit de la mer s'est déroulée à New York du 23 mai au 15 juillet 1977. S'inspirant des discussions engagées lors des sessions de négociation officielles et officieuses des trois principales commissions et de la Plénière de la Conférence, de même que des réunions tenues à titre officieux hors de son cadre, le président de la Conférence (H.S. Amerasinghe du Sri Lanka), de concert avec les présidents des trois principales commissions (Paul Bamela Engo de la République unie du Cameroun, Andrès Aguilar du Venezuela et Alexander Yankov de la Bulgarie) et les autres membres du bureau de la Conférence (Kenneth O. Rattray de la Jamaïque, rapporteur général, et J. Alan Beesley du Canada, président du Comité de rédaction) ont rédigé un nouveau Texte de négociation composite officieux (TNCO). Le TNCO constitue un nouveau pas sur la voie de l'élaboration d'un traité: il regroupe en un seul document de travail les quatre documents distincts de l'ancien Texte unique de négociation (révisé) (TUNR), présenté en mai 1976 à l'issue de la quatrième session, et il comporte de nombreuses modifications qui permettront d'en arriver à un consensus sur un éventail de questions controversées.

Bien qu'il soit difficile de porter un jugement définitif sur les résultats de la session sans une analyse plus complète du TNCO, il appert dans l'ensemble que la Conférence a beaucoup progressé dans ses travaux commencés à Caracas en 1974. De fait, la sixième session a été plus fructueuse que les deux dernières sessions mises ensemble, et bien que de nombreuses questions délicates et litigieuses ne soient pas encore réglées, toutes les questions en suspens ont été étudiées en détail et, pour certains domaines importants, la Conférence est venue plus près que jamais d'un consensus. On a donc dégagé une liste de questions qui pourront, à la prochaine session, orienter les travaux de manière à permetttre la négociation de compromis conduisant à un consensus global sur un projet de traité.

Première Commission

A la sixième session, l'attention s'est concentrée sur les travaux de la première Commission qui étudiait le système international

d'exploitation des grands fonds marins. Les trois premières semaines de la Conférence ont été exclusivement consacrées à cette question pour sortir de l'impasse où en étaient arrivés les pays industrialisés et en développement, lors de la cinquième session, sur l'accès des sociétés privées à la région des fonds marins. Dès le début, la plupart des participants se sont dit d'accord pour que la Commission essaie de tabler sur les discussions intersessionnelles fructueuses tenues à Genève (en février-mars 1977) sous la présidence de M. Jens Evensen de Norvège. Le président de la première commission a demandé à M. Evensen de diriger les travaux du groupe de travail officieux de la commission, réuni pour reformuler les compromis à la lumière des discussions intersessionnelles. Cette façon de procéder s'est révélée grandement productive et nombre des nouvelles dispositions du TNCO, foncées sur les projets de M. Evensen, représentant un pas en avant par rapport aux dispositions analogues du TUNR.

Les exploitants de gisements miniers terrestres en cause, dont le Canada, ont soulevé divers points lors des travaux du groupe de travail officieux. Le TNCO offre maintenant le cadre (article 150) dans lequel peut s'inscrire une formulation pratique permettant d'établir un équilibre entre la production minière des grands fonds marins et la production mondiale totale (à l'inverse de l'ancienne formule du TUNR) d'une manière susceptible de satisfaire aux objectifs du Canada de protéger les exploitants de gisements miniers contre une dislocation du marché attribuable à une production des mêmes minéraux dans les grands fonds marins, principalement la production de nickel. La formule doit permettre de mettre en chantier, dès le début d'une production commerciale, jusqu'à neuf sites miniers dans les grands fonds marins et elle doit également permettre à cette production d'atteindre 60 % de l'accroissement cumulatif de la demande mondiale de nickel.

En ce qui concerne la question essentielle de l'accès parallèle aux grands fonds marins (une question sur laquelle la Conférence a abouti à l'impasse lors de la cinquième session), l'article du TNCO, malgré ses graves lacunes et une certaine ambiguité, semble assurer les sociétés privées ou entités d'Etat qu'elles obtiendront de l'Autorité internationale des fonds marins des contrats d'exploitation dans la zone internationale des fonds marins. Vu en regard des conditions exposées à l'Annexe II du TNCO et régissant l'octroi de contrats par l'Autorité, l'article 151 donne l'impression de restreindre l'accès à la région des fonds marins en imposant un fardeau trop lourd aux demandeurs en ce qui concerne le transfert de techniques à l'Entreprise; il précise cependant que l'octroi de ces contrats doit s'effectuer "dans des conditions équitables et raisonnables". L'article 151 et l'Annexe II diffèrent des formulations de compromis proposées par M. Evensen pendant la session et il pourrait s'avérer difficile de les faire accepter par la plupart des pays industrialisés dont les sociétés ont investi beaucoup d'argent dans la recherche et l'exploitation des fonds marins.

On s'est employé utilement à débattre le statut juridique et le financement de l'Entreprise, questions que la Commission n'avait pas encore étudiées en détail. Bien que le texte du TNCO nécessite de nombreuses améliorations sur ces deux points, surtout en ce qui concerne les divers modes de financement des activités de l'Entreprise, il aura au moins permis de faire ressortir les principales difficultés. L'objectif est de mettre au point un mode de financement permettant à l'Entreprise d'être en activité à peu près au même temps que le seront les sociétés privées ou les entités d'Etat.

Pour la première fois, la Conférence a étudié en détail les clauses financières que doivent respecter les entrepreneurs pour exploiter les grands fonds marins. Le TNCO expose, au titre des obligations financières, un droit pour l'étude des demandes, un droit annuel fixe d'exploitation des gisements, une taxe sur la production et une part des bénéfices. Ce n'est que lorsque les montants exacts seront inscrits dans le projet de texte que nous saurons si les contributions sont trop onéreuses.

Les discussions ont également porté sur certaines des questions très complexes touchant l'organisation: la structure, les pouvoirs et les fonctions de l'Assemblée, du Conseil et de ses organes (la Commission de la planification économique, la Commission technique et la Commission des règles et règlements). En ce qui concerne l'importante question de la composition du Conseil - qui est "l'organe exécutif" de l'autorité -, le TNCO expose des critères d'admissibilité conçus aux fins d'avoir un bureau représentatif et équilibré. Le Canada n'est pas convaincu que la formule de composition exposée dans le nouvel article 159 soit entièrement acceptable: en sa qualité de plus grand producteur de nickel du monde, il lui importe de recevoir l'assurance quasi formelle qu'il aura un siège au Conseil.

En dernier lieu, la Sixième session a étudié la question des privilèges et immunités devant être conférés à l'Autorité et à l'Entreprise aux termes du traité. Sous certains rapports, le TNCO va plus loin que les dispositions du TNUR, mais de l'avis du Canada, il reste beaucoup à faire pour s'assurer que l'Entreprise ne jouisse pas, par rapport aux entités commerciales, d'avantages indus, en obtenant un éventail de privilèges et d'immunités habituellement consentis à des organisations internationales et qui ne conviennent pas à des entreprises à but lucratif.

Deuxième commission

1. Définition de la marge continentale et paiements ou contributions

A la Sixième session, le groupe des pays sans littoral et

géographiquement désavantagés a réitéré son opposition à la définition du plateau continental contenue dans le TUNR à l'article 64: "Le plateau continental d'un Etat côtier comprend le fond de la mer et le sous-sol des zones sous-marines qui s'étendent au-delà de sa mer territoriale sur toute l'étendue du prolongement naturel du territoire terrestre dudit Etat, jusqu'au rebord externe de la marge continentale, ou jusqu'à une distance de 200 milles marins des lignes de base, selon celui des deux qui est le plus grand." Les Etats sans littoral et géographiquement désavantagés ont continué d'insister pour que les droits de l'Etat côtier sur les ressources du plateau continental soient limités à un maximum de 200 milles mesurés à partir des lignes de base. Certains d'entre eux ont proposé de supprimer la souveraineté de l'Etat côtier et d'adopter comme solution de rechange un critère (le Canada, l'Australie, la Nouvelle-Zélande, le Royaume-Uni, l'Irlande, l'Inde, l'Argentine, les Etats-Unis) a présenté un front uni et a réitéré, conformément à la règle établie dans la Convention de Genève de 1958 sur le plateau continental et au principe du "prolongement naturel" posé dans "l'Affaire du plateau continental de la mer du Nord de 1969. Le droit des Etats d'exploiter le plateau jusqu'au rebord de la marge, même si elle s'étend au-delà de 200 milles. Les Etats à large plateau ont également appuyé un projet de disposition proposé par l'Irlande, qui définit précisément la marge continentale en fonction de l'épaisseur de la roche sédimentaire. Les Etats à large plateau ont réaffirmé leur volonté d'accepter une formule pour le versement, à la communauté internationale, de contributions prélevées sur les recettes tirées de l'exploitation des ressources du plateau continental au-delà des 200 milles, à la condition que la Conférence accepte la formule de l'Irlande concernant la définition de la marge. Par suite de l'opposition constante du groupe des Etats sans littoral et géographiquement désavantagés à la question des droits souverains de l'Etat côtier sur le rebord de la marge, le TNCO n'a pas retenu la formule irlandaise pour l'article 76. La position des Etats à large plateau est toutefois privilégiée dans l'article 76 du TNCO (l'ancien article 64 du TUNR) qui délimite le plateau continental jusqu'au rebord externe de la marge. De plus, on a introduit à l'article 82 du TNCO des critères révisés de partage des bénéfices suivant une formule qui ne manquera pas d'intéresser les Etats à large plateau: de 1 % à 5 % maximum de la valeur à la source. Le Canada acceptera un mode de paiement ou de contribution si une définition raisonnable du rebord externe de la marge est donnée et si l'Etat côtier maintient sa souveraineté sur les ressources du plateau.

2. Statut juridique de la zone économique exclusive

Le problème que pose la définition du statut juridique de la zone économique exclusive a constitué l'une des questions les plus épineuses. D'une part, les principaux Etats maritimes voulaient que la zone soit définie juridiquement comme la haute mer afin d'empêcher qu'on

ne réduise les droits acquis de navigation en haute mer et de survol. D'autre part, de nombreux Etats côtiers estiment que cette zone est une zone de juridiction nationale et que, de ce fait, on peut la distinguer en droit de la haute mer. Le Canada et d'autres Etats côtiers ont, lors des quatrième et cinquième sessions, proposé que pour sortir de l'impasse, on qualifie la zone sui generis, c'est-à-dire, ni haute mer, ni mer territoriale, mais comme possédant certains des attributs de l'une et de l'autre. Les nouvelles dispositions contenues dans la partie V du TNCO s'inspirent dans une grande mesure de cette idée et elles résultent d'intenses négociations officieuses (qui ont également porté sur la recherche scientifique marine dans la zone économique et sur les exceptions à la procédure de règlement des différends, voir ci-après). Elles éliminent la nécessité de délimiter en droit la zone économique exclusive en établissant un bon équilibre entre les droits des Etats côtiers dans la zone et ceux des autres Etats en ce qui touche la navigation et le survol et en ce qui touche la liberté de poser des câbles et des pipelines sous-marins tout comme celle d'utiliser la mer "à d'autres usages internationaux licites se rapportant à l'exercice de ces libertés".

Bien qu'un certain nombre d'Etats dits territorialistes (ceux qui acceptent l'idée d'une mer territoriale de 200 milles ou, du moins, la définition de la zone économique exclusive de 200 milles comme zone de juridiction nationale) peuvent encore s'opposer aux formulations du TNCO, on espère que le "principe de l'équilibre" reflété dans le projet de texte pourra finalement faire l'objet d'un consensus, surtout que les principaux Etats maritimes l'adopteront probablement, pourvu que les autres questions en suspens soient résolues. Si on peut obtenir le consensus à la septième session, on aura réussi à régler l'une des questions les plus difficiles de la Conférence.

3. Pêches

Le régime de la zone économique, maintenant fermement consacré dans le texte de négociation, reflète la position du Canada sur la gestion et le contrôle des pêches par l'Etat côtier. Les dispositions du TNCO exposent clairement que l'Etat côtier a souveraineté sur ces ressources dans la zone de 200 milles, qu'il peut déterminer les prises autorisées et toutes les autres mesures de gestion y afférentes, prévoir sa capacité de récolter et distribuer tout excédent aux autres pays. Le net consensus atteint sur cette question à la Conférence sur le droit de la mer a fait réagir un nombre croissant d'Etats, dont le Canada, qui ont jugé nécessaire d'étendre leur juridiction de pêche à 200 milles avant la fin de la Conférence.

Lors de la sixième session, les discussions liées à la pêche ont porté sur trois principales questions: a) le problème de l'accès aux ressources biologiques par les pays sans littoral et géographiquement désavantagés; b) les grands migrateurs et c) les espèces anadromes. Bien

que les articles du TNCO portant sur ces questions (articles 64, 66, 69 et 70) aient été tirés intacts des dispositions du TUNR, toutes ces questions seront sans doute étudiées à la septième session de la Conférence.

L'un des plus grands problèmes qui demeurent touche les demandes présentées par le groupe des pays sans littoral et géographiquement désavantagés pour jouir de droits préférentiels d'accès aux ressources biologiques des zones économiques exclusives des Etats côtiers. A l'origine, ce groupe de pays avait demandé de pouvoir pêcher plus que le seul surplus dans la zone économique exlcusive. Les Etats côtiers ont cependant insisté pour que la pêche soit limitée au surplus tout comme pour les tiers Etats. La présentation, à la toute fin de la session, d'un nouveau projet de texte protégeant tous les intérêts vitaux des Etats côtiers tout en accordant des avantages considérables au groupe des Etats sans littoral et géographiquement désavantagés a permis d'avancer sur la question. Bien que le texte proposé ne figure pas dans le TNCO, il pourra servir aux discussions sur ce sujet lors de la prochaine session.

On a également progressé sur la question des grands migrateurs, grâce à la présentation d'une nouvelle formule qui vise à promouvoir la coopération régionale et interrégionale et à assortir les droits et intérêts des Etats côtiers à ceux des autres Etats qui pêchent ces espèces, pour assurer la conservation des stocks et leur utilisation maximale.

L'article sur les espèces anadromes (article 66 du TNCO) a été tiré intégralement du TUNR. Il importe au Canada parce qu'il établit que les Etats dans les rivières desquelles se reproduisent des espèces anadromes sont les premiers intéressés par ces espèces et en sont principalement responsables et qu'il interdit la pêche au saumon en haute mer au-delà des limites de pêche de 200 milles. Le Canada s'oppose à toute modification de l'article 66, qui pourrait en dérégler l'équilibre actuellement précaire et compromettre un accord sur la disposition portant sur les espèces anadromes.

4. Délimitation latérale du plateau continental et de la zone économique exclusive

On a axé la discussion sur les différentes manières de modifier les articles 62 et 71 du TUNR (délimitation de la zone économique exclusive et du plateau continental, respectivement, entre deux Etats limitrophes ou qui se font face). La libye a présenté un projet de révision qui renforce le texte du TUNR et prévoit la délimitation à partir de principes d'équité. Le Canada est d'avis qu'en accordant trop d'importance à des principes d'équité, on introduit un grand élément d'incertitude dans la loi, compliquant ainsi davantage le règlement des différends sur les frontières marines. En vertu d'une proposition de l'Espagne, appuyée par le Canada et vingt autres Etats, la délimitation des frontières marines pourrait

reposer sur la ligne médiane conformément à la disposition actuelle de la Convention de 1958 sur le plateau continental.

En dépit d'intenses discussions, la Conférence est malheureusement restée divisée sur la question. Par conséquent, les dispositions du TUNR ont été reprises dans le TNCO. Le Canada n'est pas d'accord avec ces dispositions lesquelles, en accordant trop d'importance aux principes d'équité et en subordonnant l'idée de la ligne médiane, constituent une dérogation malheureuse au droit international existant. Les débats se poursuivront à la septième session et le Canada, de même que les Etats qui partagent son opinion, redoublera d'efforts en vue de faire modifier le texte de manière à ce que le principe de l'équidistance ou de la ligne médiane devienne la règle régissant la délimitation des plateaux continentaux et en vue de faire établir la même règle à l'égard des zones économiques entre deux Etats limitrophes ou qui se font face.

Commission III

1. Préservation du milieu marin

Les discussions de la Sixième session sur les questions en suspens relatives à la pollution marine se sont révélées, en grande partie, une répétition du débat de la session précédente, bien que les positions de différents pays et groupes de pays se soient précisées davantage. Deux grands sujets de préoccupation pour le Canada ont porté sur le droit des Etats côtiers de définir des normes relatives à la mer territoriale et sur leur droit de police dans la zone économique de 200 milles. On a avancé sur ces deux questions, même si le TNCO montre que les résultats ne satisfaisaient pas le Canada. En ce qui concerne les compétences législatives des Etats côtiers dans la mer territoriale, le Canada a tenté, mais en vain, de faire supprimer l'article 20 (2) de la Partie II du TNUR, qui restreignait, pour l'Etat côtier, les pouvoirs relatifs à l'adoption de lois s'appliquant à la conception, à la construction, à l'équipage ou à l'armement des navires étrangers. Ces restrictions qui constituent une suppression notable des droits souverains exercés depuis toujours par les Etats côtiers dans leurs eaux territoriales, en vertu du droit international, ont donc été reportées à l'article 21(2) du TNCO. Des consultations importantes, entre les sessions, avec d'autres gouvernements et des échanges serrés, au cours de la session, avec des gouvernements partageant le même point de vue, ont permis au Canada de faire admettre à un grand nombre de délégations que le caractère restrictif de l'article 20(2) du TNUR était inacceptable. L'article 21(2) du TNCO présente donc une formulation moins limitative. Bien que soit maintenue l'interdiction d'appliquer, dans la mer territoriale de 12 milles, des

normes nationales à la conception, à la construction, à l'équipage ou à l'armement des navires étrangers, les Etats côtiers se verraient accorder le droit de donner effet à des règles internationales généralement acceptées, et le passage sur l'interdiction de lois nationales s'appliquant à toute autre "question" est supprimé.

Le texte modifié, bien qu'il y ait progrès par rapport à la formulation précédente, pose encore de sérieuses difficultés pour le Canada. Même si elle préconisait la suppression complète de l'article 21(2), la délégation canadienne s'était néanmoins évertuée à trouver une formule pouvant satisfaire à la fois aux intérêts des Etats côtiers et à ceux des Etats du pavillon. Dans l'optique du Canada, la solution proposée par le Maroc et le Kenya pourrait éventuellement, même si elle ne répond pas à ses préoccupations, prêter davantage à un compromis que la formulation actuelle du TNCO (proposition qui entraînerait non seulement la suppression de "questions", mais réserverait au moins à l'Etat côtier le droit d'appliquer en dernier recours, en l'absence de règles internationales, des règles nationales à la conception, à la construction, à l'équipage ou à l'armement des navires étrangers dans la mer territoriale). Cette question fera l'objet d'une étude plus approfondie au cours de la période intersessionnelle.

En ce qui à trait à la Partie III du TNUR, les efforts du Canada en vue de renforcer les pouvoirs de police des Etats côtiers dans la zone économique exclusive de manière à soumettre des navires étrangers à une enquête dans les cas de pollution possible se sont révélés infructueux en raison de la forte opposition des puissances maritimes. Par ailleurs, les efforts résolus déployés par un certain nombre de puissances maritimes et destinés à limiter davantage les pouvoirs de police des Etats côtiers dans la zone économique exclusive se sont eux aussi soldés par un échec. Cependant, le TNCO contient des dispositions (principalement à l'Article 212) qui pourraient avoir pour effet d'atténuer les obligations tant des Etats côtiers que des Etats du pavillon, en ce qui a trait à l'intégration dans des lois nationales de normes internationales relatives à la pollution, en leur accordant le droit d'adopter uniquement des lois qui donnent effet aux règles et normes internationales "généralement acceptées" dans la zone économique exclusive.

La notion de l'Etat portuaire universel a été retenue malgré les efforts concertés de certaines puissances maritimes afin d'en limiter la portée. En vertu d'un amendement proposé à la Cinquième session par le Groupe de négociation officieux de la Commission III, un Etat portuaire serait autorisé à soumettre à une enquête un navire qui se rend volontairement dans ses eaux intérieures, dans son port ou dans ses installations au large des côtes, et qui a commis une infraction en déversant des déchets dans les hautes mers, les eaux intérieures, la mer territoriale ou la zone économique d'un autre Etat. Or, cet amendment n'a pas été inclus dans le

TNCO. La question devra être étudiée au cours de la Septième session.

La Sixième session a abordé une autre question qui a son importance pour le Canada. Il s'agit d'une disposition contenue dans le TNUR et qui reconnaît à l'Etat côtier le droit d'appliquer des normes écologiques spéciales dans les banquises. En effet, l'Article "Banquises" figure intégralement dans le TNCO (Article 235), ce qui ajoute à la reconnaissance internationale de la Loi canadienne sur la prévention de la pollution des eaux arctiques, de 1970.

En résumé, bien que certains articles précis comportent des lacunes importantes, le TNCO a préservé l'idée fondamentale d'un traité global sur le contrôle de la pollution marine, fondé sur la notion de zone et sur le partage fonctionnel de juridiction entre les Etats côtiers, les Etats portuaires et les Etats du pavillon. L'ensemble de ces dispositions, moyennant les modifications supplémentaires notées, constitueront un changement radical et important par rapport au régime antérieur de laissez-faire fondé sur le principe de liberté absolue dans les hautes mers.

2. Recherche scientifique marine (RSM)

Etablir dans quelle mesure un Etat côtier pourrait refuser que des recherches scientifiques marines soient menées dans sa zone économique exclusive ou sur son plateau continental, voilà un des principaux points litigieux débattus au cours de la session. (Il n'y a pas eu de mésentente sur le droit d'un Etat côtier de réglementer la recherche scientifique marine à l'intérieur de ses eaux territoriales.) A la suite de négociations officieuses intensives, un projet de disposition (faisant un tout avec les dispositions sur des questions traitant de la situation de la zone économique et du règlement des différends) a été accepté par les principaux Etats intéressés et incorporé à l'Article 247 du TNCO, qui reconnaît le principe du consentement de l'Etat côtier à la RSM dans la zone économique exclusive ou sur le plateau continental et qui contient, par ailleurs, l'importante disposition selon laquelle les Etats côtiers consentiront "normalement" à la réalisation de projets de RSM par d'autres états. Un état côtier peut toutefois refuser son consentement lorsque cette recherche entrave directement l'excercice de ses droits souverains sur les ressources biologiques et non biologiques dans la zone économique exclusive ou sur son plateau continental (ainsi que dans d'autres circonstances précisées dans le même article). A l'instar du TNUR, le TNCO comporte une disposition sur le consentement implicite, permettant l'exécution de projets de recherche six mois à partir de la date à laquelle l'Etat qui effectue les recherches fait part de son projet à l'Etat côtier, à moins que dans l'intervalle ce dernier ne l'interdise.

En outre, une clause importante figurant dans le TNCO et attribuable aux négociations de la Sixième session exempterait des dispositions obligatoires relatives au règlement des différends, les cas où l'Etat côtier exerce son pouvoir discretionaire en autorisant ou refusant la conduite de RSM ou en exerçant son droit de mettre fin aux travaux de recherche. Le TNCO, dans sa version actuelle, pourrait ne satisfaire tout à fait ni les intérêts des principaux Etats qui effectuent des recherches ni ceux de certains Etats côtiers. Toutefois une bonne partie des délégations semblent disposées à accepter le nouveau texte, du moins en tant que fondement des discussions ultérieures et en tant qu'élément d'un "ensemble" lié à la situation de la zone économique. Puisque les dispositions du TNCO constitueront un régime fondé sur le plein consentement, tout en englobant des clauses relatives à la promotion et à l'exécution de la recherche, le Canada reconnaît qu'il représente un équilibre entre le droit des Etats désireux d'effectuer des recherches et les droits et intérêts légitimes des Etats côtiers en ce qui a trait au contrôle ou à la règlementation de certains types de RSM portant sur l'utilisation des ressources sur lesquelles ils exercent des droits souverains.

Discussions plénières sur le règlement des différends

Pour la première fois, la Conférence disposait d'un projet de texte sur le règlement des différends (Partie IV du TNUR) qui était considéré au même titre que les autres parties du TNUR. Les discussions sur cette question étaient menées en plénière par le Président de la Conférence et elles visaient quatre objectifs fondamentaux: (1) améliorer le style et la rédaction du TNUR; (2) fusionner les dispositions figurant à la Partie I du TNUR relatives au règlement des différends ayant trait à l'exploitation des fonds marins, et le passage sur le système global de règlement des différends relatifs au droit de la mer, qui était compris dans la Partie IV du TNUR; (3) régler des problèmes importants, notamment certains types de différends exclus du processus prévu aux articles 17 et 18 du TNUR; et (4) gagner l'appui sur le principe général du règlement obligatoire des différends dans futur traité sur le droit de la mer.

Au cours de la session, le consensus général en vue d'accepter la création d'une Chambre des fonds marins distincte du futur tribunal du droit de la mer a revêtu une importance capitale. La Chambre aurait juridiction sur les différends relatifs à l'application des dispositions du TNCO sur l'exploitation des fonds marins. Cette mesure aura pour effet d'établir un seul système de règlement des différends pour tous les différends ayant trait à l'application du traité global sur le droit de la mer.

Un grand point litigieux fut celui portant sur l'application des procédures de règlement des différends dans l'exercice, par l'Etat côtier, de ses droits souverains sur les ressources biologiques dans la zone économique exclusive. La Partie IV du TNUR prévoit, à l'article 17, le règlement des différends dans le cas d'un Etat côtier qui "n'a manifestement pas" satisfait aux conditions déterminées fixées par la Convention en ce qui concerne l'exercice de ses devoirs en matière de ressources biologiques. Cette disposition était inacceptable pour la majorité du groupe des Etats côtiers qui ont réclamé sa suppression, prétendant qu'elle constituerait une dérogation au principe général des droits souverains des Etats côtiers sur les ressources biologiques au sein de la zone économique exclusive. En réponse à cet argument, le TNCO précise maintenant, à l'article 296, qu'aucun différend relatif à l'interprétation ou à l'application des dispositions de la Convention en ce qui concerne les ressources biologiques ne sera porté devant le tribunal à moins que certaines conditions précises relatives à la conservation et à l'utilisation des ressources biologiques n'aient pas été respectées par l'Etat côtier et à la condition générale que l'exercice du pouvoir de discrétion en faveur de celui de l'Etat côtier. En vertu d'une autre disposition, les droits souverains d'un Etat côtier ne peuvent en aucun cas être remis en question. Les mesures précitées assurent un degré élevé de protection à l'Etat côtier; ces dispositions feront l'objet d'une étude supplémentaire afin de s'assurer que la juridiction de l'Etat côtier au sein de la zone de 200 milles ne sera pas remise en question.

Exception faite de ce qui précède, il y a lieu de croire que les discussions en plénière sur les grandes lignes de la Partie IV du TNUR étaient tenues pour acceptables, dans l'ensemble, par la plupart des Etats. Un consensus assez général semble établi sur le choix de procédure figurant à l'Article 287 du TNCO, et en vertu duquel l'Etat partie peut choisir entre le Tribunal du droit de la mer, la Cour internationale de Justice, un Tribunal arbitral constitué conformément à l'Annexe VI ou un Tribunal arbitral spécial constitué en vertu de l'Annexe VII, le Tribunal arbitral général étant désigné en dernier recours lorsque le choix de procédure n'a pas été effectué. Certaines difficultés subsistent en ce qui a trait aux prétendues "exceptions facultatives", notamment la disposition du TNUR, laquelle précise que des Etat peuvent refuser la juridiction obligatoire sur la question des différends relatifs à la délimitation des zones maritimes, à la condition que l'Etat qui se prévaut de ce droit d'exception accepte une procédure régionale ou une autre procédure de recours à une tierce personne, entraînant une décision ayant force obligatoire. La disposition du TNCO (Article 297) tente de surmonter la difficulté en précisant qu'un Etat peut déclarer qu'il n'accepte pas le règlement des différends selon les dispositions prévues à la Convention sur les différends relatifs à la délimitation des zones maritimes, mais qu'il préfère une procédure régionale ou une autre procédure de recours à une tierce personne, à condition que ladite procédure exclue toute possibilité de revendication de souveraineté ou d'autres droits sur un

territoire continental ou insulaire.

Le Canada considère que l'établissement de procédures de recours à une tierce personne, entraînant une décision ayant force obligatoire, fait partie intégrante d'un nouveau traité sur le droit de la mer, lequel sera d'une importance capitale pour assurer l'application équilibrée et efficace d'un nouveau régime juridique de la mer. En dépit de certaines lacunes, les procédures de décision ou d'arbitrage incorporées au TNCO sont dans l'ensemble satisfaisantes dans l'optique canadienne et il est à espérer qu'elles feront l'objet d'un consensus à la Septième session.

Perspectives de la Conférence

Bien que la plupart des grandes questions de la Conférence aient fait l'objet de progrès notables, il faudra néanmoins procéder à des négociations intenses pour résoudre certaines difficultés qui subsistent, notamment les dispositions prévues pour l'exploitation minière des fonds marins par l'Entreprise internationale. Il faudra au moins une autre session, éventuellement deux, pour surmonter ces difficultés. En dépit de ces obstacles, la délégation canadienne estime qu'en raison des progrès réalisés lors de la sixième session, un consensus est de plus en plus immiment sur une vaste gamme de questions relatives à l'exploitation minière des fonds marins, mais que, pour conserver aux négociations leur force d'impulsion, il faudra des réunions intersessionnelles afin de définir davantage le système d'exploitation des ressources dans les fonds marins et de clarifier certaines parties du TNCO. Etant donné les progrès réalisés jusqu'à maintenant et l'effet positif des négociations sur l'élaboration du droit international de la mer, notamment dans le domaine des droits souverains des Etats côtiers sur les ressources biologiques, les Etats participants accepteront sans doute volontiers de poursuivre leurs négociations afin d'assurer le succès de la Conférence, même s'il faut deux sessions supplémentaires.

Si, après les nombreux progrès réalisés, la Conférence se révélait infructueuse, cela constituerait un grave recul pour le droit international et les Nations Unies. Sans l'adoption d'une Convention, le caractère fonctionnel de la juridiction de l'Etat côtier, comme elle est vue actuellement dans le TNCO, cèderait vraisemblablement la place à la philosophie plus radicale des territorialistes: souveraineté entière dans la zone de 200 milles. L'échec de la Conférence pourrait provoquer une série de conflits dans l'utilisation des mers et océans du monde, conflits imputables notamment aux divergences de vues quant aux règles qui gouvernent l'exploitation des fonds marins, le droit de passage dans les détroits internationaux relevant de la mer territoriale des Etats riverains de ces détroits, et les droits souverains et les juridictions des Etats côtiers dans la zone de 200 milles.

Septième session

La Septième Session de la Conférence sur le droit de la mer s'ouvrira le 28 mars, à Genève. Elle durera de sept à huit semaines, le temps de poursuivre les négociations et, nous l'espérons, d'en arriver à une entente sur le texte d'un projet de traité. Il est reconnu que le Canada est résolu à assurer le succès de la Conférence des Nations Unies sur le droit de la mer et à assurer l'adoption d'une nouvelle convention régissant tous les aspects du droit de la mer. Cet engagement reste le même, et la délégation canadienne continuera à jouer pleinement son rôle au cours des négociations, tant à l'intersession que lors de la prochaine session à Genève.

Affaires extérieures

Opérations juridiques

Le 15 septembre 1977

Historical Perspective

Office of
The Under Secretary of State
for External Affairs

Canada

Cabinet du
Sous-Secrétaire d'État
aux Affaires extérieures

Ottawa, Ontario
K1A OG2

April 7, 1978.

Dear Student,

Today, more than half of the world's population live within 200 miles of the sea and that proportion is growing constantly.

The sea is more than a highway between nations, more than a source of income for those who live on its shores. The sea constitutes an area of over 70 percent of the earth's surface. Scientists believe that it is capable of providing great mineral wealth including nickel, copper, manganese and cobalt which modern technology is beginning to scoop from its floor and wrest from beneath its bed.

But as Canadians know, the sea is as fragile as it is powerful and the protection, the management and preservation of its resources are important not only to our own nation's well-being but to that of the entire world.

A fundamental link in the world's life-line, the sea must be saved from the ravages of excessive exploitation. Negotiations with other Nation States of the world have so far prevented armed conflict and initiated a series of accepted international standards.

Our goal at the current United Nations Conference on the Law of the Sea is to achieve a new and comprehensive legal order based on the reality of both today's politics and tomorrow's potential, laws covering the uses of the sea in all its aspects, which the nations of the world must respect. Basic to this concept is the principle that the sea which flows between all of us must be utilized for the benefit of all mankind.

We trust this resource folio will help you to understand the nature of the challenge and its implications for your generation.

Yours sincerely,

Don Jamieson

The Law of the Sea in Historical Perspective:

Background Notes

Since 1973, the Third United Nations Conference on the Law of the Sea has been considering issues which have extremely important implications for Canada and the world. The Conference was first convened in New York in December of 1973 for two weeks which were devoted to procedural questions. The first substantive session was held in Caracas in the summer of 1974. This was followed by sessions in Geneva in 1975 and in New York in 1976 and 1977. The seventh session will convene in Geneva in March 1978.

The Conference is attempting to establish a new legal regime which, amongst other matters, may affect:

- Canada's sovereign rights over the resources of its continental margin; that is, the submerged/and mass bordering its coastline;

- Canada's right to manage and receive a preferential share of the living resources found over its entire continental shelf;

- the right of coastal states to take measures to protect their marine environment as Canada did in adopting the Arctic Waters Pollution Prevention Act;

- the right of coastal states to control scientific research within their zones of maritime jurisdiction;

- the disposition of the riches of the seabed beyond the jurisdiction of states so that they can be of benefit to the whole of mankind.

These are but a few of the questions which are being considered by the Third United Nations Law of the Sea Conference. Because its decisions are bound to have far-reaching consequences for the international

community as a whole, for individual states, for coastal communities and even for the individual, it is widely recognized that the Law of the Sea Conference is one of the most important diplomatic conferences ever convened under the aegis of the United Nations.

As a first task, the Conference has undertaken an in-depth review of the existing law of the sea so as to harmonize it with the new uses that are made of ocean space. Ever since the 17th century, the principle of the freedom of the seas reflecting the commercial, colonial and naval interests of the major maritime powers of that period has prevailed. This was a satisfactory basis for world order so long as the ocean space was used mainly for navigation and fishing and in ways which were intrinsically harmless to the marine environment, to the living resources of the sea or to other states.

As of late, however, this principle has been challenged as the development of technology has made possible new, more intensive utilizations of the oceans.

Sophisticated fishing gear now enables fishing vessels to catch their prey with relative ease but it may also cause over-fishing of stocks to virtual extinction.

Modern technology will soon allow the commercial exploitation of the mineral resources (i.e. the manganese nodules) of the deep seabed beyond the limits of national jurisdiction. These resources are likely to benefit only the small number of countries that have the necessary advanced technology unless a new regime is devised which takes into account the needs of mankind as a whole and of developing countries in particular.

The proliferation of oil tankers, both large and small, is increasing the risks of damage to areas where navigation is intensive, such as international straits and other sensitive areas close to the shores of coastal states where many communities are dependent on the resources of the sea.

While scientific research in the marine environment must be encouraged, it may, without appropriate control, open the door to abuses which might have undesirable consequences for the security and economic interests of coastal states.

It is, therefore, imperative for the conference to elaborate a series of rules aimed at preventing these abuses.

Another important task of the Conference is to reconcile the potentially serious conflicts of interest amongst states. On the one hand, there are the major maritime powers with significant shipping or distant-water

fishing fleets and navies serving global strategic interests which demand maximum mobility; the interests of these states are best served by maintaining the largest possible area of the seas free of constraints. On the other hand, there are the coastal nations which, in these times of increasing dependence on sources of food and raw materials, are interested in obtaining access to and control of the renewable and non-renewable resources contained in and under waters adjacent to their coasts. The Conference will have to find a better equilibrium between these conflicting interests and, therefore, complement a reasonable measure of freedom on the high seas with recogintion of coastal state interests.

Thus, the over-all objectives of the Conference go far beyond finding solutions to specific issues: they involve a radical restructuring of the legal system which heretofore has regulated man's activities in relation to ocean space. Up to now, there has been a clear-cut distinction between state sovereignty our land and a narrow territorial sea on the one hand and complete freedom on the high seas on the other. The Conference may well result in a major departure from this age-old regime in establishing some forms of jurisdiction which would seek to reconcile the interests of individual states with those of the international community as a whole in a more functional manner.

Canadian Interests

The Law of the Sea Conference is dealing with a number of areas that are vital to Canadians.

Canada has one of the longest coastlines in the world and it is essential that its whole marine environment be adequately protected from contamination. There exists a number of areas which are particularly sensitive from an ecological point of view, either by reason of their harsh climatic conditions or because of the nature of the marine resources found therein. Such are the Arctic, Labrador, Newfoundland and Gulf of St. Lawrence areas, where high concentrations of ice, short daylight periods and severe and unpredictable weather conditions prevail for a good part of the year. Such are also the delicately-balanced ecological systems prevailing in the highly-productive fishing areas on Canada's East and West coasts. The Conference should, therefore, allow coastal states to adopt, over and above universally applicable standards, special protection measures such as those which Canada took in 1970 through the Arctic Waters Pollution Prevention Act and the Canada Shipping Act.

Canada is bordered by a vast submerged area which is the natural prolongation of its land mass and extends, in some areas, much beyond 200 miles. This submerged geological formation comprises the continental shelf, the

continental slope and the continental rise and is generally referred to, as a whole, as the continental margin. On the basis of existing international law and the practice of states, Canada exercises sovereign rights over the natural resources of this extensive and potentially rich area. Other states are opposing Canada's view of the geographical limits of these rights and are suggesting extremely restricted limits, as little as forty miles.

Canada is an active coastal fishing nation, and a great many Canadians, and in some cases whole communities, rely heavily on fishing for a livelihood or as a source of food. Canada is seeking both a right to manage and a preferential share of the living resources that are found off its coasts and over its continental margin so as to ensure the maximum utilization as well as the preservation and maintenance of stocks.

Canada has considerable technological knowledge in the field of marine scientific research and favours the widest possible freedom for this type of activity. At the same time, it is aware that scientific research in the marine environment can have military and economic implications and that it is difficult to define "pure" research. Canada would therefore allow such research in the area of jurisdiction of a coastal state, provided that prior to the commencement of the intended research, and in accordance with an enforceable procedure, the researching country has sought, and the coastal state has given permission, to conduct the research.

Canada is interested in opening up the Arctic to navigation but it considers the waters of the Arctic archipelago as being Canadian and therefore it is not ready to accept that the Northwest Passage should be treated as an international waterway free of any coastal state controls. Certain states, however, maintain that the Northwest Passage is an international strait and are demanding a right of free transit through it.

Finally, Canada is a major ship-user for its exports and imports even though it does not itself possess an extensive ocean-going shipping fleet. For this reason, Canada is opposed to any suggestion that would burden navigation with unnecessary and uncalled-for constraints likely to impede the sea-borne flow of goods in and out of the country.

These basic interests have led Canada to call for a radical modification of the Law of the Sea to take into account present-day political, economic and technological realities. Canada has not sought to assert total sovereignty over wide areas of the marine environment but instead has pursued a functional approach whereby no more jurisdiction would be exercised than would be required to

protect its specific interests. Thus Canada has asserted the right of the coastal state to have jurisdiction for the purposes of seabed exploitation, preservation of the marine environment, management of the living resources of the sea and has legislated to that effect.

Historical Background

It has been suggested that the Law of the Sea has evolved over the centuries in three stages. The first, during which the law was based essentially on commercial, colonial and military interests alone, lasted from the 17th century up to approximately the Second World War. During the period following the Second World War and lasting until very recent times, the law went through an evolution and became resource law as much as commercial and military law. We are now, however, well into a third phase in which the law must necessarily continue to recognize legitimate commercial interests and freedom of communication, and must remain resource-oriented in recognizing the rights of coastal states in certain resources of the sea, but must now be also environmentally-oriented in seeking to protect the maritime environment on which man and all living species are dependent for survival.

This evolution of the Law of the Sea can be seen as the result of many factors but can more easily be reconstructed through a brief recapitulation of the methods used over past centuries to modify existing practices i.e. unilateral decisions, bilateral or regional agreements and universal conventions.

Unilateral solutions are perhaps the oldest means of developing international law; state practice often develops into custom and eventually into norms of international law. It is state practice which led to the adoption of the traditional three-mile limit for the territorial sea. A single example of unilateral action may be found in the 1945 Truman Proclamation on the Continental Shelf which laid the foundation for the 1958 Convention on the Continental Shelf. Another well-known example is that of the Latin American States which, through the development and unilateral application of the patrimonial sea doctrine, have succeeded in rallying the support of a large number of states in favour of wide resource jurisdictions.

In the wake of the failure of the first two Law of the Sea Conference to set a limit to the territorial sea or to agree on the establishment of exclusive fishing zones, Canada also resorted to unilateral action. In the first instance, in 1964, it established a nine-mile exclusive fishing zone beyond its three-mile territorial sea. This measure provoked protests on the part of the U.S.A. but two years later that country took a similar step, therby illustrating how state practice develops international law

and how political attitudes change. Again in 1970, Canada unilaterally extended its territorial sea to twelve miles as had already been done by a large number of coastal nations. Canada also created in the same year exclusive fishing zones in the Gulf of St. Lawrence, the Bay of Fundy, Queen Charlotte Sound, Hecate Strait and Dixon Entrance, but undertook at the same time negotiations with other countries whose fisheries would have been adversely affected by the Canadian decision. Also in 1970, Canada took special measures to protect the special ecological conditions of the Arctic by introducing anti-pollution regulations for a 100-mile area off the Arctic coastline. This action was taken because existing international law did not adequately recognize the need of coastal states to protect themselves against threats to their marine environment which recent experience has shown to be very real.

These unilateral measures must, of course, be looked at in the light of the simultaneous efforts undertaken by Canada in international fora with a view to developing in a rational manner up-to-date multilateral solutions to some of these problems.

There are, of course, a great number of problems which, by their very nature, directly involve relations between two or more states but do not readily lend themsleves to universal solution. A prime example of such problems can be found in the field of fisheries. For instance, the complexity of the problems and the number of participating countries in the context of North West Atlantic and North East Pacific fisheries have led Canada, along with its neighbours, to enter into bilateral or regional arrangements for the purpose of better regulating such fisheries. Such agreements have successfully established the importance of sound management principles for high-seas fishing and have thus made a major contribution to the development of international law.

The most remarkable attempts to develop the Law of the Sea at the world-wide level were made in 1958 and 1960 at the first two Law of the Sea Conferences. Three of the Conventions elaborated in 1958 were essentially a codification of the existing law, that is, one which was basically concerned with practical applications of the principle of the freedom of the high seas; these conventions are the Convention on the Territorial Sea and the Contiguous Zone, the Convention on Fishing and Conservation of the Living Resources of the Seas and the Convention on the High Seas. A fourth Convention, that on the Continental Shelf, in confirming relatively new state practices with respect of the resources of the continental shelf, recognized for the first time the vital interests of coastal states in wide areas off their coasts without affecting the status of superjacent waters as high seas.

Except for the relative success achieved in respect of the Continental Shelf Convention, the efforts of a number of coastal nations to obtain a broader jurisdiction over their adjacent waters were to no avail, as the more conservative maritime states held fast to the traditional view of the Law of the Sea whereby, beyond coastal state sovereignty in a norrow belt of territorial sea, a regime of virtually unlimited freedom should prevail.

The result was an impasse, as it proved impossible to set a precise limit to the territorial sea or to grant states the right to establish exclusive fishing zones beyond it.

The inability of the first Conference to settle those issues made it necessary to convene a second Conference which met in 1960. Notwithstanding a Canada-U.S.A. compromise proposal for a six-mile territorial sea and a six-mile exclusive fishing zone beyond, which failed by only one vote, the second Conference was as powerless as the first in resolving the intractable limits questions.

The Third Conference

It is against this background that a third attempt is being made to develop the Law of the Sea on a world-wide basis. The elaboration of rules of universal application would, of course, be more conducive to the establishment of a lasting order on the oceans but, given the importance of the varied and often conflicting interests at stake, the negociating process is turning out to be lengthy and arduous. Evidence of these difficulties has been found within the context of the Conference's preparatory body, the United Nations Seabed Committee, where three main groups of interests can be singled out.

The major maritime states certainly wish to have a share in the resources of the sea, and in particular in those in close proximity to their shores, but their main concern lies in keeping navigation as free from coastal state intervention as possible. They want their vessels to ply the high seas freely and to deploy their naval forces at will. These factors have led them to resist any fundamental encroachment on the principle of freedom of the seas.

On the other hand, coastal nations are demanding their fair share of the adjacent sea resources which they consider as being intrinsically related to their land domain and coastal environment. For this reason, a majority of developing coastal nations have advanced the "economic zone" concept whereby they would have full ownership of the resources, both living and mineral, in a 200-mile zone off their coastline and would be empowered to take appropriate measures for the protection of their marine environment and the regulation of scientific research within that area.

Freedom of navigation and of overflight would be guaranteed in the 188-mile zone beyond the 12-mile band of territorial sea.

Lastly, there is a third group of countries, those without a coastline or with a small continental shelf - referred to respectively as the land-locked and the geographically-disadvantaged countries - which advocate narrow areas of national jurisdiction over sea resources. These countries, precisely because of their special geographic circumstances, consider that their only chance of sharing in the benefits of ocean resources exploitation is to participate in the international regime to be established beyond the limits of national jurisdiction. It follows that the smaller the areas under national jurisdiction remain, the larger the international area will be and the greater the benefits accruing to them.

These three main interest groups naturally encompass a variety of views on each specific issue and, in many cases, national interests dictate different attitudes irrespective of group philosophy.

The Main Issues at the Law of the Sea Conference

As may be gathered from the foregoing, the main issues at the Law of the Sea Conference relate to the main uses that are made of the oceans and, as noted above, to the conflicting theories advanced in this respect. Two of these uses are concerned with the resources of the sea: the harvesting of the living resources and the extraction of the mineral resources, together with the question of their conservation and management. The Conference is also re-examining whether two other sea-related activities, navigation and scientific research, shall be subjected to virtually unlimited or regulated freedom. A further issue, and one which has a direct bearing on all of these uses, is that relating to the protection of the marine environment. As the debate in the Seabed Committee has shown, all these uses are closely linked to one another, and any decision taken on one issue is bound to affect the outcome of other issues as well.

The Living Resources of the Sea

With the world's population in constant expansion, the demand for high-protein food, such as can be derived from the living resources of the oceans, has been increasing rapidly. Although modern fishing vessels and gear are better able than ever to satisfy these needs, their very capability to exploit any fish stock through highly concentrated efforts is now threatening the world's fisheries with over-exploitation and possible extinction. These developments make it urgent for the participants in the Conference to settle two series of related problems in connection with the living resources of the sea issue,

namely the conservation of these resources and their utilization.

There already exists the 1958 Convention on Fishing and Conservation of the Resources of the High Seas, which established a set of loose and general rules to govern the conduct of fishing. This Convention is, however, basically concerned with freedom of fishing outside territorial waters and oriented towards conservation only. It does not address itself to the basic problems of proper management of these resources and of their equitable distribution.

Canada's attitude is based upon a comprehensive functional approach to the Law of the Sea, whereby management of fisheries is considered as forming part of the broader concept of management of the marine environment as a whole. This approach was adopted by the 1972 Stockholm Conference on the Human Environment in a statement which reads as follows:

> "The marine environment and all the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired. This applies especially to coastal nations which have a particular interest in the management of coastal area resources."

In order to develop further this functional approach to fisheries management, Canada has suggested, by way of illustration, a differentiation between various ecological groupings of species in order to identify the management regimes most appropriate to each. In accordance with this approach, marine living resources have been grouped into four categories: sedentary species, coastal species, anadromous species and wide-ranging species. The Canadian position towards each of these species is as follows:

> (1) Coastal states should maintain their exclusive sovereign rights over sedentary species, as they are now recognized under the 1958 Convention on the Continental Shelf: these would include organisms, like crabs, which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil.
>
> (2) Coastal states should have the exclusive right to manage and conserve coastal species, i.e. those species which are free-swimming and generally found over the continental shelf or

in similar nutrient-rich areas, and should acquire preferential rights over their harvest, to the limit of their capacity.

(3) Coastal states should have exclusive rights for the management and harvesting of anadromous species, such as salmon, throughout their migratory range, recognizing only the right of other states to fish for these species when such fish are found in their own waters, subject to agreement with the state of origin; this would, of course, imply a ban an high seas fishing for anadromous species and special bilateral arrangements, as just mentioned, when these species are harvested by states other than the state of origin.

(4) As to wide-ranging species, such as tuna and whales, Canada favours the establishment of international arrangements, while recognizing that certain coastal states in the waters of which these stocks spend part of their life, have special interests in their management and harvesting.

Many coastal states, however, and the developing countries in particular, consider it essential to lay down a general regime which would allow the coastal state to claim exclusive sovereign rights in both the management and the harvest of all species found within a defined zone off its coast. This approach goes somewhat further than the functional or species approach described above but it is not necessarily inconsistent with it. Indeed, countries such as Canada which favour the species approach may be in a better position to implement it under the over-all exclusive sovereign rights approach advocated by the developing coastal states.

It is with these factors in mind that the Canadian delegation to the Seabed Committee has co-sponsored, together with the delegations of India, Kenya, Sri Lanka, Senegal and Madagascar, a set of draft treaty articles which would permit the coastal states to claim (a) exclusive sovereign rights in the management and harvest of all living resources within 200 miles off its coast, as well as (b) preferential rights in respect of such resources in areas adjacent to this zone (thus giving Canada the sort of control it wishes to have over fisheries beyond 200 miles, out to the edge of the continental margin). In co-sponsoring these draft articles, Canada has made clear that, in the Canadian view at least, they would not preclude continued foreign fishing, under Canadian management authority, in the areas within Canada's jurisdiction.

Current trends towards a much wider jurisdiction over fisheries in favour of coastal states obviously favour Canada's basic position and should help Canada achieve its essential objectives which are to obtain those rights which are basic to the protection of the interests of many of its coastal communities. However, the opposition to such trends remains important, as many long-distance fishing nations continue to insist on limited national areas of jurisdiction in order to maintain their operations at the level they have been accustomed to, in some cases over centuries.

The Resources of the Continental Shelf

Just prior to the middle of the century, it became apparent that the submerged area bordering certain continental land-masses contained a significant wealth of mineral resources, including substantial oil and gas deposits, the economic value of which has yet to be fully ascertained but is undoubtedly large.

The doctrine of the continental shelf had its origin in the 1945 Truman Proclamation which stated that: "The Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coast of the United States as appertaining to the United States, subject to its jurisdiction and control". As mentioned above, this unilateral proclamation of the United States began a new trend in state practice which resulted, after only a little more than a decade, in the adoption of the only relevant international convention, the 1958 Continental shelf Convention.

The Convention, which is now in force, having been ratified by more than 40 states (including Canada), recognizes that coastal states enjoy exclusive sovereign rights for the exploration and exploitation of the seabed resources of their continental shelves and that these rights belong to the coastal state irrespective of that state's capacity to extract the seabed resources.

However, the 1958 Convention adopted very elastic limits for the juridical continental shelf, that is, the area of the continental shelf over which coastal states actually enjoy exclusive sovereign rights. Thus the inner limit of the juridical continental shelf is the edge of the territorial sea, which, according to national claims, ranges from 3 to 200 miles in breadth. The outer limit is a double one: it can either be a depth of 200 meters or beyond that the depth which will admit of the exploitation of the underlying resources. This latter formula has usually been referred to as the "exploitability" criterion.

The matter of national limits of jurisdiction over seabed resources became particularly important with the

introduction of the Maltese Resolution at the United Nations in 1967. This Resolution resulted in the establishment in the latter part of that year of what became the United Nations Committee on the Seabed. The Maltese proposal called upon the United Nations to undertake the "examination of the question of the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind". A Declaration of Principles Governing the Seabed, formulated by the Seabed Committee, was embodied at the 1970 Session of the UN General Assembly in a Resolution; it confirmed that there is an area of the seabed and ocean floor beyond the limits of national jursidiction which constitutes the "common heritage of mankind", and which is not subject to national appropriation or claims of sovereignty. Thus, attention was focused on the crucial question - what are the "limits of present national jurisdiction" over seabed resources?

The Canadian position regarding the limits of the continental shelf is based on the 1958 Convention itself, on the 1969 decisions of the International Court of Justice in the North Sea Continental Shelf cases (which defined the continental shelf as the submerged natural prolongation of the continental land mass) and on state practice. On the basis of these three legal foundations, Canada claims and exercises rights over the whole of the continental margin comprising not only the physical continental shelf but the continental slope and rise as well.

Strong opposition to the Canadian stance comes from a group of land-locked and geographically-disadvantaged countries, which group is sufficiently large to form a potential blocking third at the Conference (supposing that decisions will be taken by a two-thirds majority), thereby fore-stalling the adoption of any proposal it cannot support. These countries favour a very restricted area of coastal state rights over continental shelf resources, as they hope to maximize for themselves the benefits that might accrue from a large area of international jurisdiction over the seabed. Criteria such as the 200-meter isobath and a distance of 40 miles have been proposed by this group as limits.

There are a number of proponents of the economic zone concept who would limit a coastal state's shelf rights to 200 miles. In their view, the existence of coastal states' rights beyond that limit would deprive the International Seabed Authority of all the more accessible resources and leave to it only the deep seabed resources. In this connection, it should be noted that a 200-mile economic zone would encompass the continental margins of the great majority of coastal states, and that it would be only Canada and a mere handful of other wide-shelf states who,

under a strict 200-mile formula, would be contributing areas of their physical continental shelf to the International Authority. (Canada's East coast continental margin does extend much beyond 200 miles.)

Navigation

Under the traditional principles of the Law of the Sea, the seas were divided into three basic areas: internal waters, the territorial sea and the high seas.

Coastal states exercise their full sovereignty over any foreign vessel entering their internal waters, the outer limits of these waters coinciding with the baselines from which the territorial sea is measured.

As to the regime applicable in the territorial sea, that is, the belt of sea adjacent to the coast, the 1958 Convention on the Territorial Sea sets down that coastal states must accept, in these waters over which they enjoy sovereignty, passage of foreign vessels if it is "innocent", i.e. not prejudicial to its peace, good order and security. If the coastal state deems that passage is prejudicial in this sense, then it may take necessary action to suspend it.

Finally, all activities, including navigation, in the ocean area beyond the territorial sea, the high seas, are governed by the traditional principle of freedom of the high seas. As mentioned earlier, this principle, which has been subjected to few constraints, has opened the door to some abuses which should now be corrected, in particular as they affect the living resources and the marine environment as a whole.

These traditional rules are now in the process of being reviewed in light of the additional rights envisaged for coastal states, both as regards more extensive limits for the territorial sea and new powers for the control of marine pollution. The next sections will attempt to describe some of the effects these new concepts may have, among other things, on navigation.

The Territorial Sea

One of the major decisions the Conference will have to take will be to determine the breadth of the territorial sea, as it was impossible to arrive at any agreement on this question at the first two conferences in 1958 and 1960. It would seem safe to conjecture that if any limit is to be retained by the coming Conference, it will coincide with the twelve-mile limit. Firstly, a majority of coastal nations have chosen that limit for their own territorial waters and secondly, in the Conference's preparatory committee itself, a majority of states have tabled proposals (in particular those dealing with the economic zone) which refer to the

territorial sea as measuring 12 miles. However, in this latter instance, the acceptance of the limit by the developing nations is contingent upon the establishment of an economic zone of 188 miles beyond the territorial sea. Likewise, those states still holding to the traditional three-mile limit would be ready to move to twelve miles only if their own proposals concerning free transit through straits are dealt with satisfactorily at the Conference.

Canada, for its part, established its own territorial sea at twelve miles in 1970 and would like to see the Conference agree on such a breadth, provided coastal states' interests in the marine environment are adequately protected.

It is not clear from the terms of the 1958 Convention on the Territorial Sea whether the doctrine of innocent passage would allow the coastal state to suspend the passage of a foreign vessel which may result in pollution of its environment. Canada, which asserts that such a right exists, will seek confirmation of this view. Major maritime powers are opposed to such an interpretation of "innocent passage" on the grounds that it would entitle coastal states to interfere unilaterally and unduly with maritime navigation and commerce. On the other hand, other coastal states are aware that it is precisely in areas close to their shoreline, and therefore in their territorial waters, that the greatest concentration of navigation will occur as ships enter their ports and, in so doing, increase the risks to their marine environment.

Passage Through Straits used for International Navigation

Given the great importance both major maritime states and the states whose waters enclose an international strait are attaching to the question of passage through these waterways, its solution is bound to be pivotal to the success or failure of the Conference.

Major maritime states are very much concerned over the status of those straits which, following the adoption of a twelve-mile limit for the territorial sea, will lie completely within the territorial waters of one or more coastal nations. Their concern stems from military and commercial considerations as some of the straits involved are among the most important in the world: Gibraltar, Hormuz, Malacca, Bab el Mandeb,etc. To eliminate the possibility of indiscriminate coastal state interference with passage through these straits, these powers are insisting upon the repudiation of the present law of innocent passage through international straits and are proposing, in its stead, the right of free transit, with the result that coastal states could not interfere irresponsibly with traffic taking place in these international straits. Moreover, they would extend this doctrine to all international

straits and would not limit its application to those newly enclosed by the extension of the territorial sea to twelve miles.

The strait states admantly oppose this new "free transit" concept and insist that "innocent passage" must prevail in international straits whether such straits measure a maximum of six miles (under the traditional three-mile territorial sea) or of twenty-four miles (under a twelve-mile territorial sea), as they consider some measure of control over transit of ships essential to their security and the protection of their environment.

As already mentioned, Canada has every reason to encourage seaborne commerce and communications, and passage through international straits is an essential part of these movements. Such passage is of as high importance as well for activities carried out in conjunction with the protection of Canada's security interests. This applies whether these activities are carried out by Canadian vessels or by those of our allies in furtherance of the purposes of collective security. Canada, however, also regards the protection of its maritime environment as a matter of paramount importance. The solution towards which Canada is striving is therefore one which will admit of the minimum form of regulation of transit consistent with the avoidance of damage to the environment.

Canada takes the view that any regime devised for straits used for international navigation would not be applicable to the Northwest Passage since it has not been used for international navigation.

Archipelagoes

Closely related to the straits issue is a concept put forth by the archipelagic states (such as the Philippines, Indonesia and Fiji) which would establish a special legal status for the waters linking the various islands of oceanic archipelagic states, that is, states constituted wholly or mainly of islands as opposed to coastal archipelagic states whose main territory is continental. The archipelagic states would delimit their territorial sea from baselines joining the outermost points of the outermost islands. The waters lying within the baselines would be termed "archipelagic waters" over which the archipelagic state would have complete sovereignty, subject to the right of innocent passage by foreign vessels in sea lanes designated by the archipelagic state.

Canada looks favourably upon the development of the archipelagic waters theory even though it does not apply directly to the Arctic archipelago which is a coastal one; it appears to be a move in the right direction, at least insofar as economic jurisdiction is concerned. Canada

appreciates the legitimate concerns of the archipelagic states for their security and for the protection of their particular environment. The thorny issue of transit through straits is of course a major difficulty in this context.

Protection of the Marine Environment

Public opinion is rightly concerned over the continuing degradation of the marine environment; and, more particularly, it is acutely aware that indiscriminate utilization of the sea may inflict long-lasting damage upon the marine environment.

In his search for new sources of food, man is relying more and more on the sea and shoreline which abound in nutritious living organisms. He is also strongly attracted by the sea environment for purposes of recreation. Oil spills or seepages from the seabed often have deleterious effects on the living resources of the sea and the quality of the shoreline, even though the pollution of the oceans is primarily caused by land-based sources. Norms are needed to keep man's activities in, over, below or on the sea within acceptable limits.

Protection of the marine environment from contamination has so far been discussed in two main international fora: the Inter-governmental Maritime Consultative Organization (IMCO) and the 1972 United Nations Conference on the Human Environment.

Since its inception, IMCO has been administering a number of conventions aimed at regulating navigation so that it will cause as little deterioration as possible of the marine environment; the most notable of these instruments are:

- the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (amended in 1962, 1969);

- the 1962 Convention on the Liability of Operators of Nuclear Ships;

- the 1969 Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties;

- the 1969 Convention on Civil Liability for Oil Pollution Damage; and

- the 1971 Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage.

In 1972, outside the IMCO context, a Convention on the Dumping of Wastes at Sea established a total prohibition on the discharge of certain extremely noxious substances and provided for the strict regulation of dumping of other less dangerous materials; it also envisaged for the first time a role for the coastal state in the enforcement of these measures. Another convention, which was negotiated, in 1973 the Convention for the Prevention of Pollution from Ships, goes beyond the 1954 Convention since it applies not only to oil but to the discharge from ships of all other noxious substances, including sewage and garbage. Except for the latter Convention, which has not yet entered into force,the other Conventions, although useful, deal with specific types of pollution only and would be much more effective if they included strict enforcement and fair compensation mechanisms.

The 1972 Stockholm Conference elaborated a Declaration on the Human Environment whose widely-accepted statement of principles may be considered as laying down the foundation for the future development of international environmental law. Three of the principles of the Declaration have particular relevance to marine pollution. A first principle posits the duty of States to prevent marine pollution; a second reflects the responsibility of States to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction; and a third calls upon states to cooperate in the further development of international law regarding liability and compensation for the victims of pollution and other environmental damage.

A Statement of Objectives concerning the Marine Environment, which was endorsed by the Human Environment Conference, recognizes the particular interests of coastal states with respect to the management of coastal area resources. The same statement also recognizes that there are limits to the assimilative and regenerative capacities of the sea and that, therefore, management concepts should be applied to the marine environment, to marine resources and to the prevention of marine pollution.

The Human Environment Conference also subscribed to 23 marine pollution principles which provide the guidelines and general framework for a comprehensive and interdisciplinary approach to all aspects of the marine pollution problem, including land-based sources. These principles represent the first step towards the application of management concepts, through both national and international

measures, to the preservation of the marine environment. They elaborate in some detail the duties of States but do not fully deal with their consequential rights.

Although the three Stockholm statements deal with the human environment, and the marine environment in particular, in a truly comprehensive fashion, it cannot be said that they are declaratory of pre-existing law. They have, therefore, been referred to the Law of the Sea Conference for translation into binding treaty obligations inasmuch as they concern the marine environment.

The groundwork, therefore, seems to be sufficiently advanced for the Law of the Sea to elaborate a legal instrument pertaining to the whole realm of the marine environment, or an "umbrella" treaty which would become the organic link between all other instruments, including those developed by IMCO, aimed at controlling specific sources of pollution of the marine environment. A great majority of states agree on the necessity of an all-embracing treaty which would have as its foundation the basic obligation of all states to protect and preserve the marine environment.

Such an obligation would embrace all sources of pollution, not only pollution from ships which is of primary concern to the Conference but as well pollution caused by seabed activities, pollution carried from land-based sources, through run-offs or through the atmosphere, and pollution arising from the disposal of domestic and industrial wastes.

The Conference cannot be expected, however, to spell out the specific obligations and rights of states with respect to land-based sources of pollution as it is recognized that, in accordance with existing international law, these sources will remain within the purview of each individual state which unquestionably has primary jurisdiction in respect of these sources.

What is more particularly at stake at the Conference will be control over ship-generated pollution. The main questions which have to be settled in respect of this type of pollution relate to who may adopt anti-pollution standards, which authority may enforce them and over which area they should be applicable.

Canada does, of course, subscribe to the idea that competent international organizations should establish appropriate, stringent standards of universal application against marine pollution. Canada also agrees that, in areas beyond the jurisdiction of coastal states, the state of the ship's registry should have the primary responsibility for enforcing these standards.

But Canada, with its long coastline and its very

special ecological conditions and physical hazards, considers that coastal states should be empowered to prescribe and enforce their own anti-pollution standards, to the extent necessary, over and above the internationally-agreed rules, not only in their territorial waters but also within their areas of jurisdiction beyond. It is on that basis that Canada adopted in 1970 the Arctic Waters Pollution Prevention Act and related regulations under the Canada Shipping Act.

A number of states, mainly the important shipping nations, are adamantly opposed to any suggestion that would give a coastal state effective unilateral mechanisms to protect its marine environment, since they fear that such jurisdiction would allow it to interfere indiscriminately with navigation. For these countries, only internationally-agreed standards enforced mainly by the state of the ship's registry should be applicable not only on the high seas but in the territorial waters of coastal states as well.

The developing coastal states by and large adhere to the economic zone concept according to which the coastal state would have full jurisdictional powers in respect to marine pollution in the 200-mile zone. However, some of these states are having second thoughts regarding the adoption of high international standards, since they tend to view them as impediments in the way of their future development, in particular their shipbuilding projects.

Pollution control is assuredly one of the crucial problems to be resolved by the Law of the Sea Conference. Extensions of coastal state jurisdiction automatically mean restrictions on some of the freedoms still cherished by many of the sea-faring nations. But given the precariousness of the marine environment and the disastrous consequences unchecked abuses could have on everyone's life, it would seem imperative that such freedoms as have existed heretofore be balances by obligations. It is equally true that there should be guarantees on the part of coastal states not to over-react, not to over-control, so as not to interfere unduly with legitimate activities.

Marine Scientific Research

The general Canadian position on coastal state management of marine resources requires the exercise of effective controls to ensure that the results of research related to such resources are used for the benefit of Canada as well as to acquire greater knowledge of its resources and environment. The Canadian position does not envisage that scientific research in the oceans be arbitrarily restricted, but rather that coastal states should facilitate such research insofar as possible by, for example, extending port facilities to research vessels, their crews and scientific staff.

It must, however, be recognized that a good deal of research is conducted for national reasons, including in particular for economic and military purposes; accordingly, within areas under their resource and environmental jurisdiction, coastal states should have the right to control and, where necessary, disallow such activities by foreign states or their nationals. Coastal states must have the right to participate in research conducted in areas adjacent to their coasts by foreign states and must have access to data and samples collected, through prompt and full reporting of results and their effective dissemination.

However, the difficulties in reaching agreement on such provisions, owing to non-scientific factors, should not be under-estimated. While generally similar provisions are already embodied in the 1958 Convention on the Continental Shelf, their application even in that more limited context has given rise to considerable controversy; still greater difficulties may be expected in seeking agreement on the further extension and broadening of such provisions desired by many coastal states and the developing countries in particular.

The International Area of the Seabed

One of the tasks of the Conference is to elaborate a set of rules for the international seabed area and to decide upon the nature and functions of the international authority that will govern exploration and exploitation in the area on the basis of the 1970 Declaration of Principles adopted by the United Nations General Assembly. The Declaration, which in itself virtually constitutes the nucleus of a draft treaty on the regime for the area, provides that the seabed beyond national jurisdiction and the resources contained therein are the "common heritage of mankind" and may not be subject to national jurisdiction.

The mineral resources of the international seabed are very real. At the present state of knowledge, these resources comprise ferro-manganese nodules, which are known to cover vast areas of the deep ocean floor and contain four elements of commercial significance: manganese, nickel, cooper and cobalt. It is considered that, within a relatively short period of time, some of the more developed countries will have the technological capability to extract and process these nodules for commercial purposes. Since it is expected that nodules will be mined primarily for their nickel content, and since Canada is the world's major producer and exporter of nickel, it is evident that this new source cannot be ignored by Canada. It would, therefore, seem to be clearly within Canada's national interest, not only to promote the establishment of an orderly regime in the area for the benefit of mankind in general and of developing countries in particular, but also to see that Canadian economic interests are protected.

In 1970, the General Assembly of the United Nations adopted a resolution calling for a moratorium on all exploration and exploitation activities in the international seabed area. As that resolution implied that no activity of any sort, even exploratory or experimental work, could be carried out in the area prior to the establishment of a permanent regime, Canada along with most developed countries abstained on the resolution, since it seemed to restrict unduly scientific and technological progress and could have resulted in an unacceptable delay in making these resources available to all.

Since then, and in spite of the moratorium resolution, a number of technologically-advanced countries have undertaken exploration activities in the international area, and a number of American companies are now said to be ready to move within two or three years to the exploitation stage. These activities have led to strong criticism on the part of the developing countries. The United States have also put forth a proposal for putting into force, immediately following agreement on the seabed issue at the forthcoming Law of the Sea Conference, and without awaiting necessary ratifications, the new regime in a provisional form so that the entrepreneurs can initiate exploitation without delay.

While it is generally agreed that a new International Authority should be established to govern activities in the international area, serious difficulties have been encountered as regards the powers to be given to this body. Developing countries are insisting that all activities in the area, including scientific research, be conducted solely by the Authority through a subsidiary organ they call the Enterprise. However, they now recognize that the high cost of seabed exploration and exploitation would necessitate engaging in joint ventures, service contracts or production-sharing arrangements with contracting states or their nationals. Several developed countries for their part prefer a licensing scheme whereby exploration and exploitation would be undertaken by contracting states and their nationals under license from the Authority. Canada has recognized the necessity of compromise in this delicate issue and has proposed a system involving a mix of licensing as well as activities contracted by the Authority, including the possibility of direct exploration and exploitation by the Authority itself when it acquires the means to do so.

It is important that Canada continue to work towards the establishment of a rational regime for the exploration and the exploitation of the resources of the international area. This regime, which must ensure that the utilization of these resources will be of benefit to mankind, should also provide opportunities for Canada's minerals industry to develop and be protected against the undesirable effects that the substantial increase in the production of certain minerals could have on its own position.

Conclusion

To be successful, the Third Law of the Sea Conference must reconcile the conflicting interests of participating nations. Clearly, this involves compromises in order to open the way to a viable and long-lasting constitution of the oceans. Canada has entered these negotiations with a view to achieving such an agreement, remaining conscious at all times of its own national requirements, as well as of the broader interests of mankind as a whole.

As important as the land..."Rational exploitation of marine resources and protection of the marine environment are two of the Canadian objectives at the United Nations Law of the Sea Conference."

La mer nourricière..."L'exploitation rationnelle des richesses de la mer et la protection du milieu marin, deux des objectifs canadiens à la Conférence des Nations Unies sur le droit de la mer."

External Affairs Canada Affaires extérieures Canada

Historical Perspective

The Law of the Sea in Historical Perspective:

Background Notes

Since 1973, the Third United Nations Conference on the Law of the Sea has been considering issues which have extremely important implications for Canada and the world. The Conference was first convened in New York in December of 1973 for two weeks which were devoted to procedural questions. The first substantive session was held in Caracas in the summer of 1974. This was followed by sessions in Geneva in 1975 and in New York in 1976 and 1977. The seventh session will convene in Geneva in March 1978.

The Conference is attempting to establish a new legal regime which, amongst other matters, may affect:

- Canada's sovereign rights over the resources of its continental margin; that is, the submerged/and mass bordering its coastline;

- Canada's right to manage and receive a preferential share of the living resources found over its entire continental shelf;

- the right of coastal states to take measures to protect their marine environment as Canada did in adopting the Arctic Waters Pollution Prevention Act;

- the right of coastal states to control scientific research within their zones of maritime jurisdiction;

- the disposition of the riches of the seabed beyond the jurisdiction of states so that they can be of benefit to the whole of mankind.

These are but a few of the questions which are being considered by the Third United Nations Law of the Sea Conference. Because its decisions are bound to have far-reaching consequences for the international

community as a whole, for individual states, for coastal communities and even for the individual, it is widely recognized that the Law of the Sea Conference is one of the most important diplomatic conferences ever convened under the aegis of the United Nations.

As a first task, the Conference has undertaken an in-depth review of the existing law of the sea so as to harmonize it with the new uses that are made of ocean space. Ever since the 17th century, the principle of the freedom of the seas reflecting the commercial, colonial and naval interests of the major maritime powers of that period has prevailed. This was a satisfactory basis for world order so long as the ocean space was used mainly for navigation and fishing and in ways which were intrinsically harmless to the marine environment, to the living resources of the sea or to other states.

As of late, however, this principle has been challenged as the development of technology has made possible new, more intensive utilizations of the oceans.

Sophisticated fishing gear now enables fishing vessels to catch their prey with relative ease but it may also cause over-fishing of stocks to virtual extinction.

Modern technology will soon allow the commercial exploitation of the mineral resources (i.e. the manganese nodules) of the deep seabed beyond the limits of national jurisdiction. These resources are likely to benefit only the small number of countries that have the necessary advanced technology unless a new regime is devised which takes into account the needs of mankind as a whole and of developing countries in particular.

The proliferation of oil tankers, both large and small, is increasing the risks of damage to areas where navigation is intensive, such as international straits and other sensitive areas close to the shores of coastal states where many communities are dependent on the resources of the sea.

While scientific research in the marine environment must be encouraged, it may, without appropriate control, open the door to abuses which might have undesirable consequences for the security and economic interests of coastal states.

It is, therefore, imperative for the conference to elaborate a series of rules aimed at preventing these abuses.

Another important task of the Conference is to reconcile the potentially serious conflicts of interest amongst states. On the one hand, there are the major maritime powers with significant shipping or distant-water

fishing fleets and navies serving global strategic interests which demand maximum mobility; the interests of these states are best served by maintaining the largest possible area of the seas free of constraints. On the other hand, there are the coastal nations which, in these times of increasing dependence on sources of food and raw materials, are interested in obtaining access to and control of the renewable and non-renewable resources contained in and under waters adjacent to their coasts. The Conference will have to find a better equilibrium between these conflicting interests and, therefore, complement a reasonable measure of freedom on the high seas with recogintion of coastal state interests.

Thus, the over-all objectives of the Conference go far beyond finding solutions to specific issues: they involve a radical restructuring of the legal system which heretofore has regulated man's activities in relation to ocean space. Up to now, there has been a clear-cut distinction between state sovereignty our land and a narrow territorial sea on the one hand and complete freedom on the high seas on the other. The Conference may well result in a major departure from this age-old regime in establishing some forms of jurisdiction which would seek to reconcile the interests of individual states with those of the international community as a whole in a more functional manner.

Canadian Interests

The Law of the Sea Conference is dealing with a number of areas that are vital to Canadians.

Canada has one of the longest coastlines in the world and it is essential that its whole marine environment be adequately protected from contamination. There exists a number of areas which are particularly sensitive from an ecological point of view, either by reason of their harsh climatic conditions or because of the nature of the marine resources found therein. Such are the Arctic, Labrador, Newfoundland and Gulf of St. Lawrence areas, where high concentrations of ice, short daylight periods and severe and unpredictable weather conditions prevail for a good part of the year. Such are also the delicately-balanced ecological systems prevailing in the highly-productive fishing areas on Canada's East and West coasts. The Conference should, therefore, allow coastal states to adopt, over and above universally applicable standards, special protection measures such as those which Canada took in 1970 through the Arctic Waters Pollution Prevention Act and the Canada Shipping Act.

Canada is bordered by a vast submerged area which is the natural prolongation of its land mass and extends, in some areas, much beyond 200 miles. This submerged geological formation comprises the continental shelf, the

continental slope and the continental rise and is generally referred to, as a whole, as the continental margin. On the basis of existing international law and the practice of states, Canada exercises sovereign rights over the natural resources of this extensive and potentially rich area. Other states are opposing Canada's view of the geographical limits of these rights and are suggesting extremely restricted limits, as little as forty miles.

Canada is an active coastal fishing nation, and a great many Canadians, and in some cases whole communities, rely heavily on fishing for a livelihood or as a source of food. Canada is seeking both a right to manage and a preferential share of the living resources that are found off its coasts and over its continental margin so as to ensure the maximum utilization as well as the preservation and maintenance of stocks.

Canada has considerable technological knowledge in the field of marine scientific research and favours the widest possible freedom for this type of activity. At the same time, it is aware that scientific research in the marine environment can have military and economic implications and that it is difficult to define "pure" research. Canada would therefore allow such research in the area of jurisdiction of a coastal state, provided that prior to the commencement of the intended research, and in accordance with an enforceable procedure, the researching country has sought, and the coastal state has given permission, to conduct the research.

Canada is interested in opening up the Arctic to navigation but it considers the waters of the Arctic archipelago as being Canadian and therefore it is not ready to accept that the Northwest Passage should be treated as an international waterway free of any coastal state controls. Certain states, however, maintain that the Northwest Passage is an international strait and are demanding a right of free transit through it.

Finally, Canada is a major ship-user for its exports and imports even though it does not itself possess an extensive ocean-going shipping fleet. For this reason, Canada is opposed to any suggestion that would burden navigation with unnecessary and uncalled-for constraints likely to impede the sea-borne flow of goods in and out of the country.

These basic interests have led Canada to call for a radical modification of the Law of the Sea to take into account present-day political, economic and technological realities. Canada has not sought to assert total sovereignty over wide areas of the marine environment but instead has pursued a functional approach whereby no more jurisdiction would be exercised than would be required to

protect its specific interests. Thus Canada has asserted the right of the coastal state to have jurisdiction for the purposes of seabed exploitation, preservation of the marine environment, management of the living resources of the sea and has legislated to that effect.

Historical Background

It has been suggested that the Law of the Sea has evolved over the centuries in three stages. The first, during which the law was based essentially on commercial, colonial and military interests alone, lasted from the 17th century up to approximately the Second World War. During the period following the Second World War and lasting until very recent times, the law went through an evolution and became resource law as much as commercial and military law. We are now, however, well into a third phase in which the law must necessarily continue to recognize legitimate commercial interests and freedom of communication, and must remain resource-oriented in recognizing the rights of coastal states in certain resources of the sea, but must now be also environmentally-oriented in seeking to protect the maritime environment on which man and all living species are dependent for survival.

This evolution of the Law of the Sea can be seen as the result of many factors but can more easily be reconstructed through a brief recapitulation of the methods used over past centuries to modify existing practices i.e. unilateral decisions, bilateral or regional agreements and universal conventions.

Unilateral solutions are perhaps the oldest means of developing international law; state practice often develops into custom and eventually into norms of international law. It is state practice which led to the adoption of the traditional three-mile limit for the territorial sea. A single example of unilateral action may be found in the 1945 Truman Proclamation on the Continental Shelf which laid the foundation for the 1958 Convention on the Continental Shelf. Another well-known example is that of the Latin American States which, through the development and unilateral application of the patrimonial sea doctrine, have succeeded in rallying the support of a large number of states in favour of wide resource jurisdictions.

In the wake of the failure of the first two Law of the Sea Conference to set a limit to the territorial sea or to agree on the establishment of exclusive fishing zones, Canada also resorted to unilateral action. In the first instance, in 1964, it established a nine-mile exclusive fishing zone beyond its three-mile territorial sea. This measure provoked protests on the part of the U.S.A. but two years later that country took a similar step, therby illustrating how state practice develops international law

and how political attitudes change. Again in 1970, Canada unilaterally extended its territorial sea to twelve miles as had already been done by a large number of coastal nations. Canada also created in the same year exclusive fishing zones in the Gulf of St. Lawrence, the Bay of Fundy, Queen Charlotte Sound, Hecate Strait and Dixon Entrance, but undertook at the same time negotiations with other countries whose fisheries would have been adversely affected by the Canadian decision. Also in 1970, Canada took special measures to protect the special ecological conditions of the Arctic by introducing anti-pollution regulations for a 100-mile area off the Arctic coastline. This action was taken because existing international law did not adequately recognize the need of coastal states to protect themselves against threats to their marine environment which recent experience has shown to be very real.

These unilateral measures must, of course, be looked at in the light of the simultaneous efforts undertaken by Canada in international fora with a view to developing in a rational manner up-to-date multilateral solutions to some of these problems.

There are, of course, a great number of problems which, by their very nature, directly involve relations between two or more states but do not readily lend themsleves to universal solution. A prime example of such problems can be found in the field of fisheries. For instance, the complexity of the problems and the number of participating countries in the context of North West Atlantic and North East Pacific fisheries have led Canada, along with its neighbours, to enter into bilateral or regional arrangements for the purpose of better regulating such fisheries. Such agreements have successfully established the importance of sound management principles for high-seas fishing and have thus made a major contribution to the development of international law.

The most remarkable attempts to develop the Law of the Sea at the world-wide level were made in 1958 and 1960 at the first two Law of the Sea Conferences. Three of the Conventions elaborated in 1958 were essentially a codification of the existing law, that is, one which was basically concerned with practical applications of the principle of the freedom of the high seas; these conventions are the Convention on the Territorial Sea and the Contiguous Zone, the Convention on Fishing and Conservation of the Living Resources of the Seas and the Convention on the High Seas. A fourth Convention, that on the Continental Shelf, in confirming relatively new state practices with respect of the resources of the continental shelf, recognized for the first time the vital interests of coastal states in wide areas off their coasts without affecting the status of superjacent waters as high seas.

Except for the relative success achieved in respect of the Continental Shelf Convention, the efforts of a number of coastal nations to obtain a broader jurisdiction over their adjacent waters were to no avail, as the more conservative maritime states held fast to the traditional view of the Law of the Sea whereby, beyond coastal state sovereignty in a norrow belt of territorial sea, a regime of virtually unlimited freedom should prevail.

The result was an impasse, as it proved impossible to set a precise limit to the territorial sea or to grant states the right to establish exclusive fishing zones beyond it.

The inability of the first Conference to settle those issues made it necessary to convene a second Conference which met in 1960. Notwithstanding a Canada-U.S.A. compromise proposal for a six-mile territorial sea and a six-mile exclusive fishing zone beyond, which failed by only one vote, the second Conference was as powerless as the first in resolving the intractable limits questions.

The Third Conference

It is against this background that a third attempt is being made to develop the Law of the Sea on a world-wide basis. The elaboration of rules of universal application would, of course, be more conducive to the establishment of a lasting order on the oceans but, given the importance of the varied and often conflicting interests at stake, the negociating process is turning out to be lengthy and arduous. Evidence of these difficulties has been found within the context of the Conference's preparatory body, the United Nations Seabed Committee, where three main groups of interests can be singled out.

The major maritime states certainly wish to have a share in the resources of the sea, and in particular in those in close proximity to their shores, but their main concern lies in keeping navigation as free from coastal state intervention as possible. They want their vessels to ply the high seas freely and to deploy their naval forces at will. These factors have led them to resist any fundamental encroachment on the principle of freedom of the seas.

On the other hand, coastal nations are demanding their fair share of the adjacent sea resources which they consider as being intrinsically related to their land domain and coastal environment. For this reason, a majority of developing coastal nations have advanced the "economic zone" concept whereby they would have full ownership of the resources, both living and mineral, in a 200-mile zone off their coastline and would be empowered to take appropriate measures for the protection of their marine environment and the regulation of scientific research within that area.

Freedom of navigation and of overflight would be guaranteed in the 188-mile zone beyond the 12-mile band of territorial sea.

Lastly, there is a third group of countries, those without a coastline or with a small continental shelf - referred to respectively as the land-locked and the geographically-disadvantaged countries - which advocate narrow areas of national jurisdiction over sea resources. These countries, precisely because of their special geographic circumstances, consider that their only chance of sharing in the benefits of ocean resources exploitation is to participate in the international regime to be established beyond the limits of national jurisdiction. It follows that the smaller the areas under national jurisdiction remain, the larger the international area will be and the greater the benefits accruing to them.

These three main interest groups naturally encompass a variety of views on each specific issue and, in many cases, national interests dictate different attitudes irrespective of group philosophy.

The Main Issues at the Law of the Sea Conference

As may be gathered from the foregoing, the main issues at the Law of the Sea Conference relate to the main uses that are made of the oceans and, as noted above, to the conflicting theories advanced in this respect. Two of these uses are concerned with the resources of the sea: the harvesting of the living resources and the extraction of the mineral resources, together with the question of their conservation and management. The Conference is also re-examining whether two other sea-related activities, navigation and scientific research, shall be subjected to virtually unlimited or regulated freedom. A further issue, and one which has a direct bearing on all of these uses, is that relating to the protection of the marine environment. As the debate in the Seabed Committee has shown, all these uses are closely linked to one another, and any decision taken on one issue is bound to affect the outcome of other issues as well.

The Living Resources of the Sea

With the world's population in constant expansion, the demand for high-protein food, such as can be derived from the living resources of the oceans, has been increasing rapidly. Although modern fishing vessels and gear are better able than ever to satisfy these needs, their very capability to exploit any fish stock through highly concentrated efforts is now threatening the world's fisheries with over-exploitation and possible extinction. These developments make it urgent for the participants in the Conference to settle two series of related problems in connection with the living resources of the sea issue,

namely the conservation of these resources and their utilization.

There already exists the 1958 Convention on Fishing and Conservation of the Resources of the High Seas, which established a set of loose and general rules to govern the conduct of fishing. This Convention is, however, basically concerned with freedom of fishing outside territorial waters and oriented towards conservation only. It does not address itself to the basic problems of proper management of these resources and of their equitable distribution.

Canada's attitude is based upon a comprehensive functional approach to the Law of the Sea, whereby management of fisheries is considered as forming part of the broader concept of management of the marine environment as a whole. This approach was adopted by the 1972 Stockholm Conference on the Human Environment in a statement which reads as follows:

> "The marine environment and all the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired. This applies especially to coastal nations which have a particular interest in the management of coastal area resources."

In order to develop further this functional approach to fisheries management, Canada has suggested, by way of illustration, a differentiation between various ecological groupings of species in order to identify the management regimes most appropriate to each. In accordance with this approach, marine living resources have been grouped into four categories: sedentary species, coastal species, anadromous species and wide-ranging species. The Canadian position towards each of these species is as follows:

> (1) Coastal states should maintain their exclusive sovereign rights over sedentary species, as they are now recognized under the 1958 Convention on the Continental Shelf: these would include organisms, like crabs, which, at the harvestable stage, either are immobile on or under the seabed, or are unable to move except in constant physical contact with the seabed or the subsoil.
>
> (2) Coastal states should have the exclusive right to manage and conserve coastal species, i.e. those species which are free-swimming and generally found over the continental shelf or

in similar nutrient-rich areas, and should acquire preferential rights over their harvest, to the limit of their capacity.

(3) Coastal states should have exclusive rights for the management and harvesting of anadromous species, such as salmon, throughout their migratory range, recognizing only the right of other states to fish for these species when such fish are found in their own waters, subject to agreement with the state of origin; this would, of course, imply a ban an high seas fishing for anadromous species and special bilateral arrangements, as just mentioned, when these species are harvested by states other than the state of origin.

(4) As to wide-ranging species, such as tuna and whales, Canada favours the establishment of international arrangements, while recognizing that certain coastal states in the waters of which these stocks spend part of their life, have special interests in their management and harvesting.

Many coastal states, however, and the developing countries in particular, consider it essential to lay down a general regime which would allow the coastal state to claim exclusive sovereign rights in both the management and the harvest of all species found within a defined zone off its coast. This approach goes somewhat further than the functional or species approach described above but it is not necessarily inconsistent with it. Indeed, countries such as Canada which favour the species approach may be in a better position to implement it under the over-all exclusive sovereign rights approach advocated by the developing coastal states.

It is with these factors in mind that the Canadian delegation to the Seabed Committee has co-sponsored, together with the delegations of India, Kenya, Sri Lanka, Senegal and Madagascar, a set of draft treaty articles which would permit the coastal states to claim (a) exclusive sovereign rights in the management and harvest of all living resources within 200 miles off its coast, as well as (b) preferential rights in respect of such resources in areas adjacent to this zone (thus giving Canada the sort of control it wishes to have over fisheries beyond 200 miles, out to the edge of the continental margin). In co-sponsoring these draft articles, Canada has made clear that, in the Canadian view at least, they would not preclude continued foreign fishing, under Canadian management authority, in the areas within Canada's jurisdiction.

Current trends towards a much wider jurisdiction over fisheries in favour of coastal states obviously favour Canada's basic position and should help Canada achieve its essential objectives which are to obtain those rights which are basic to the protection of the interests of many of its coastal communities. However, the opposition to such trends remains important, as many long-distance fishing nations continue to insist on limited national areas of jurisdiction in order to maintain their operations at the level they have been accustomed to, in some cases over centuries.

The Resources of the Continental Shelf

Just prior to the middle of the century, it became apparent that the submerged area bordering certain continental land-masses contained a significant wealth of mineral resources, including substantial oil and gas deposits, the economic value of which has yet to be fully ascertained but is undoubtedly large.

The doctrine of the continental shelf had its origin in the 1945 Truman Proclamation which stated that: "The Government of the United States regards the natural resources of the subsoil and seabed of the continental shelf beneath the high seas but contiguous to the coast of the United States as appertaining to the United States, subject to its jurisdiction and control". As mentioned above, this unilateral proclamation of the United States began a new trend in state practice which resulted, after only a little more than a decade, in the adoption of the only relevant international convention, the 1958 Continental shelf Convention.

The Convention, which is now in force, having been ratified by more than 40 states (including Canada), recognizes that coastal states enjoy exclusive sovereign rights for the exploration and exploitation of the seabed resources of their continental shelves and that these rights belong to the coastal state irrespective of that state's capacity to extract the seabed resources.

However, the 1958 Convention adopted very elastic limits for the juridical continental shelf, that is, the area of the continental shelf over which coastal states actually enjoy exclusive sovereign rights. Thus the inner limit of the juridical continental shelf is the edge of the territorial sea, which, according to national claims, ranges from 3 to 200 miles in breadth. The outer limit is a double one: it can either be a depth of 200 meters or beyond that the depth which will admit of the exploitation of the underlying resources. This latter formula has usually been referred to as the "exploitability" criterion.

The matter of national limits of jurisdiction over seabed resources became particularly important with the

introduction of the Maltese Resolution at the United Nations in 1967. This Resolution resulted in the establishment in the latter part of that year of what became the United Nations Committee on the Seabed. The Maltese proposal called upon the United Nations to undertake the "examination of the question of the reservation exclusively for peaceful purposes of the seabed and ocean floor and the subsoil thereof, underlying the high seas beyond the limits of present national jurisdiction, and the use of their resources in the interests of mankind". A Declaration of Principles Governing the Seabed, formulated by the Seabed Committee, was embodied at the 1970 Session of the UN General Assembly in a Resolution; it confirmed that there is an area of the seabed and ocean floor beyond the limits of national jursidiction which constitutes the "common heritage of mankind", and which is not subject to national appropriation or claims of sovereignty. Thus, attention was focused on the crucial question - what are the "limits of present national jurisdiction" over seabed resources?

The Canadian position regarding the limits of the continental shelf is based on the 1958 Convention itself, on the 1969 decisions of the International Court of Justice in the North Sea Continental Shelf cases (which defined the continental shelf as the submerged natural prolongation of the continental land mass) and on state practice. On the basis of these three legal foundations, Canada claims and exercises rights over the whole of the continental margin comprising not only the physical continental shelf but the continental slope and rise as well.

Strong opposition to the Canadian stance comes from a group of land-locked and geographically-disadvantaged countries, which group is sufficiently large to form a potential blocking third at the Conference (supposing that decisions will be taken by a two-thirds majority), thereby fore-stalling the adoption of any proposal it cannot support. These countries favour a very restricted area of coastal state rights over continental shelf resources, as they hope to maximize for themselves the benefits that might accrue from a large area of international jurisdiction over the seabed. Criteria such as the 200-meter isobath and a distance of 40 miles have been proposed by this group as limits.

There are a number of proponents of the economic zone concept who would limit a coastal state's shelf rights to 200 miles. In their view, the existence of coastal states' rights beyond that limit would deprive the International Seabed Authority of all the more accessible resources and leave to it only the deep seabed resources. In this connection, it should be noted that a 200-mile economic zone would encompass the continental margins of the great majority of coastal states, and that it would be only Canada and a mere handful of other wide-shelf states who,

under a strict 200-mile formula, would be contributing areas of their physical continental shelf to the International Authority. (Canada's East coast continental margin does extend much beyond 200 miles.)

Navigation

Under the traditional principles of the Law of the Sea, the seas were divided into three basic areas: internal waters, the territorial sea and the high seas.

Coastal states exercise their full sovereignty over any foreign vessel entering their internal waters, the outer limits of these waters coinciding with the baselines from which the territorial sea is measured.

As to the regime applicable in the territorial sea, that is, the belt of sea adjacent to the coast, the 1958 Convention on the Territorial Sea sets down that coastal states must accept, in these waters over which they enjoy sovereignty, passage of foreign vessels if it is "innocent", i.e. not prejudicial to its peace, good order and security. If the coastal state deems that passage is prejudicial in this sense, then it may take necessary action to suspend it.

Finally, all activities, including navigation, in the ocean area beyond the territorial sea, the high seas, are governed by the traditional principle of freedom of the high seas. As mentioned earlier, this principle, which has been subjected to few constraints, has opened the door to some abuses which should now be corrected, in particular as they affect the living resources and the marine environment as a whole.

These traditional rules are now in the process of being reviewed in light of the additional rights envisaged for coastal states, both as regards more extensive limits for the territorial sea and new powers for the control of marine pollution. The next sections will attempt to describe some of the effects these new concepts may have, among other things, on navigation.

The Territorial Sea

One of the major decisions the Conference will have to take will be to determine the breadth of the territorial sea, as it was impossible to arrive at any agreement on this question at the first two conferences in 1958 and 1960. It would seem safe to conjecture that if any limit is to be retained by the coming Conference, it will coincide with the twelve-mile limit. Firstly, a majority of coastal nations have chosen that limit for their own territorial waters and secondly, in the Conference's preparatory committee itself, a majority of states have tabled proposals (in particular those dealing with the economic zone) which refer to the

territorial sea as measuring 12 miles. However, in this latter instance, the acceptance of the limit by the developing nations is contingent upon the establishment of an economic zone of 188 miles beyond the territorial sea. Likewise, those states still holding to the traditional three-mile limit would be ready to move to twelve miles only if their own proposals concerning free transit through straits are dealt with satisfactorily at the Conference.

Canada, for its part, established its own territorial sea at twelve miles in 1970 and would like to see the Conference agree on such a breadth, provided coastal states' interests in the marine environment are adequately protected.

It is not clear from the terms of the 1958 Convention on the Territorial Sea whether the doctrine of innocent passage would allow the coastal state to suspend the passage of a foreign vessel which may result in pollution of its environment. Canada, which asserts that such a right exists, will seek confirmation of this view. Major maritime powers are opposed to such an interpretation of "innocent passage" on the grounds that it would entitle coastal states to interfere unilaterally and unduly with maritime navigation and commerce. On the other hand, other coastal states are aware that it is precisely in areas close to their shoreline, and therefore in their territorial waters, that the greatest concentration of navigation will occur as ships enter their ports and, in so doing, increase the risks to their marine environment.

Passage Through Straits used for International Navigation

Given the great importance both major maritime states and the states whose waters enclose an international strait are attaching to the question of passage through these waterways, its solution is bound to be pivotal to the success or failure of the Conference.

Major maritime states are very much concerned over the status of those straits which, following the adoption of a twelve-mile limit for the territorial sea, will lie completely within the territorial waters of one or more coastal nations. Their concern stems from military and commercial considerations as some of the straits involved are among the most important in the world: Gibraltar, Hormuz, Malacca, Bab el Mandeb,etc. To eliminate the possibility of indiscriminate coastal state interference with passage through these straits, these powers are insisting upon the repudiation of the present law of innocent passage through international straits and are proposing, in its stead, the right of free transit, with the result that coastal states could not interfere irresponsibly with traffic taking place in these international straits. Moreover, they would extend this doctrine to all international

straits and would not limit its application to those newly enclosed by the extension of the territorial sea to twelve miles.

The strait states admantly oppose this new "free transit" concept and insist that "innocent passage" must prevail in international straits whether such straits measure a maximum of six miles (under the traditional three-mile territorial sea) or of twenty-four miles (under a twelve-mile territorial sea), as they consider some measure of control over transit of ships essential to their security and the protection of their environment.

As already mentioned, Canada has every reason to encourage seaborne commerce and communications, and passage through international straits is an essential part of these movements. Such passage is of as high importance as well for activities carried out in conjunction with the protection of Canada's security interests. This applies whether these activities are carried out by Canadian vessels or by those of our allies in furtherance of the purposes of collective security. Canada, however, also regards the protection of its maritime environment as a matter of paramount importance. The solution towards which Canada is striving is therefore one which will admit of the minimum form of regulation of transit consistent with the avoidance of damage to the environment.

Canada takes the view that any regime devised for straits used for international navigation would not be applicable to the Northwest Passage since it has not been used for international navigation.

Archipelagoes

Closely related to the straits issue is a concept put forth by the archipelagic states (such as the Philippines, Indonesia and Fiji) which would establish a special legal status for the waters linking the various islands of oceanic archipelagic states, that is, states constituted wholly or mainly of islands as opposed to coastal archipelagic states whose main territory is continental. The archipelagic states would delimit their territorial sea from baselines joining the outermost points of the outermost islands. The waters lying within the baselines would be termed "archipelagic waters" over which the archipelagic state would have complete sovereignty, subject to the right of innocent passage by foreign vessels in sea lanes designated by the archipelagic state.

Canada looks favourably upon the development of the archipelagic waters theory even though it does not apply directly to the Arctic archipelago which is a coastal one; it appears to be a move in the right direction, at least insofar as economic jurisdiction is concerned. Canada

appreciates the legitimate concerns of the archipelagic states for their security and for the protection of their particular environment. The thorny issue of transit through straits is of course a major difficulty in this context.

Protection of the Marine Environment

Public opinion is rightly concerned over the continuing degradation of the marine environment; and, more particularly, it is acutely aware that indiscriminate utilization of the sea may inflict long-lasting damage upon the marine environment.

In his search for new sources of food, man is relying more and more on the sea and shoreline which abound in nutritious living organisms. He is also strongly attracted by the sea environment for purposes of recreation. Oil spills or seepages from the seabed often have deleterious effects on the living resources of the sea and the quality of the shoreline, even though the pollution of the oceans is primarily caused by land-based sources. Norms are needed to keep man's activities in, over, below or on the sea within acceptable limits.

Protection of the marine environment from contamination has so far been discussed in two main international fora: the Inter-governmental Maritime Consultative Organization (IMCO) and the 1972 United Nations Conference on the Human Environment.

Since its inception, IMCO has been administering a number of conventions aimed at regulating navigation so that it will cause as little deterioration as possible of the marine environment; the most notable of these instruments are:

- the 1954 International Convention for the Prevention of Pollution of the Sea by Oil (amended in 1962, 1969);
- the 1962 Convention on the Liability of Operators of Nuclear Ships;
- the 1969 Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties;
- the 1969 Convention on Civil Liability for Oil Pollution Damage; and

- the 1971 Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage.

In 1972, outside the IMCO context, a Convention on the Dumping of Wastes at Sea established a total prohibition on the discharge of certain extremely noxious substances and provided for the strict regulation of dumping of other less dangerous materials; it also envisaged for the first time a role for the coastal state in the enforcement of these measures. Another convention, which was negotiated, in 1973 the Convention for the Prevention of Pollution from Ships, goes beyond the 1954 Convention since it applies not only to oil but to the discharge from ships of all other noxious substances, including sewage and garbage. Except for the latter Convention, which has not yet entered into force,the other Conventions, although useful, deal with specific types of pollution only and would be much more effective if they included strict enforcement and fair compensation mechanisms.

The 1972 Stockholm Conference elaborated a Declaration on the Human Environment whose widely-accepted statement of principles may be considered as laying down the foundation for the future development of international environmental law. Three of the principles of the Declaration have particular relevance to marine pollution. A first principle posits the duty of States to prevent marine pollution; a second reflects the responsibility of States to ensure that activities within their jurisdiction or control do not cause damage to the environment of other states or of areas beyond the limits of national jurisdiction; and a third calls upon states to cooperate in the further development of international law regarding liability and compensation for the victims of pollution and other environmental damage.

A Statement of Objectives concerning the Marine Environment, which was endorsed by the Human Environment Conference, recognizes the particular interests of coastal states with respect to the management of coastal area resources. The same statement also recognizes that there are limits to the assimilative and regenerative capacities of the sea and that, therefore, management concepts should be applied to the marine environment, to marine resources and to the prevention of marine pollution.

The Human Environment Conference also subscribed to 23 marine pollution principles which provide the guidelines and general framework for a comprehensive and interdisciplinary approach to all aspects of the marine pollution problem, including land-based sources. These principles represent the first step towards the application of management concepts, through both national and international

measures, to the preservation of the marine environment. They elaborate in some detail the duties of States but do not fully deal with their consequential rights.

Although the three Stockholm statements deal with the human environment, and the marine environment in particular, in a truly comprehensive fashion, it cannot be said that they are declaratory of pre-existing law. They have, therefore, been referred to the Law of the Sea Conference for translation into binding treaty obligations inasmuch as they concern the marine environment.

The groundwork, therefore, seems to be sufficiently advanced for the Law of the Sea to elaborate a legal instrument pertaining to the whole realm of the marine environment, or an "umbrella" treaty which would become the organic link between all other instruments, including those developed by IMCO, aimed at controlling specific sources of pollution of the marine environment. A great majority of states agree on the necessity of an all-embracing treaty which would have as its foundation the basic obligation of all states to protect and preserve the marine environment.

Such an obligation would embrace all sources of pollution, not only pollution from ships which is of primary concern to the Conference but as well pollution caused by seabed activities, pollution carried from land-based sources, through run-offs or through the atmosphere, and pollution arising from the disposal of domestic and industrial wastes.

The Conference cannot be expected, however, to spell out the specific obligations and rights of states with respect to land-based sources of pollution as it is recognized that, in accordance with existing international law, these sources will remain within the purview of each individual state which unquestionably has primary jurisdiction in respect of these sources.

What is more particularly at stake at the Conference will be control over ship-generated pollution. The main questions which have to be settled in respect of this type of pollution relate to who may adopt anti-pollution standards, which authority may enforce them and over which area they should be applicable.

Canada does, of course, subscribe to the idea that competent international organizations should establish appropriate, stringent standards of universal application against marine pollution. Canada also agrees that, in areas beyond the jurisdiction of coastal states, the state of the ship's registry should have the primary responsibility for enforcing these standards.

But Canada, with its long coastline and its very

special ecological conditions and physical hazards, considers that coastal states should be empowered to prescribe and enforce their own anti-pollution standards, to the extent necessary, over and above the internationally-agreed rules, not only in their territorial waters but also within their areas of jurisdiction beyond. It is on that basis that Canada adopted in 1970 the Arctic Waters Pollution Prevention Act and related regulations under the Canada Shipping Act.

A number of states, mainly the important shipping nations, are adamantly opposed to any suggestion that would give a coastal state effective unilateral mechanisms to protect its marine environment, since they fear that such jurisdiction would allow it to interfere indiscriminately with navigation. For these countries, only internationally-agreed standards enforced mainly by the state of the ship's registry should be applicable not only on the high seas but in the territorial waters of coastal states as well.

The developing coastal states by and large adhere to the economic zone concept according to which the coastal state would have full jurisdictional powers in respect to marine pollution in the 200-mile zone. However, some of these states are having second thoughts regarding the adoption of high international standards, since they tend to view them as impediments in the way of their future development, in particular their shipbuilding projects.

Pollution control is assuredly one of the crucial problems to be resolved by the Law of the Sea Conference. Extensions of coastal state jurisdiction automatically mean restrictions on some of the freedoms still cherished by many of the sea-faring nations. But given the precariousness of the marine environment and the disastrous consequences unchecked abuses could have on everyone's life, it would seem imperative that such freedoms as have existed heretofore be balances by obligations. It is equally true that there should be guarantees on the part of coastal states not to over-react, not to over-control, so as not to interfere unduly with legitimate activities.

Marine Scientific Research

The general Canadian position on coastal state management of marine resources requires the exercise of effective controls to ensure that the results of research related to such resources are used for the benefit of Canada as well as to acquire greater knowledge of its resources and environment. The Canadian position does not envisage that scientific research in the oceans be arbitrarily restricted, but rather that coastal states should facilitate such research insofar as possible by, for example, extending port facilities to research vessels, their crews and scientific staff.

It must, however, be recognized that a good deal of research is conducted for national reasons, including in particular for economic and military purposes; accordingly, within areas under their resource and environmental jurisdiction, coastal states should have the right to control and, where necessary, disallow such activities by foreign states or their nationals. Coastal states must have the right to participate in research conducted in areas adjacent to their coasts by foreign states and must have access to data and samples collected, through prompt and full reporting of results and their effective dissemination.

However, the difficulties in reaching agreement on such provisions, owing to non-scientific factors, should not be under-estimated. While generally similar provisions are already embodied in the 1958 Convention on the Continental Shelf, their application even in that more limited context has given rise to considerable controversy; still greater difficulties may be expected in seeking agreement on the further extension and broadening of such provisions desired by many coastal states and the developing countries in particular.

The International Area of the Seabed

One of the tasks of the Conference is to elaborate a set of rules for the international seabed area and to decide upon the nature and functions of the international authority that will govern exploration and exploitation in the area on the basis of the 1970 Declaration of Principles adopted by the United Nations General Assembly. The Declaration, which in itself virtually constitutes the nucleus of a draft treaty on the regime for the area, provides that the seabed beyond national jurisdiction and the resources contained therein are the "common heritage of mankind" and may not be subject to national jurisdiction.

The mineral resources of the international seabed are very real. At the present state of knowledge, these resources comprise ferro-manganese nodules, which are known to cover vast areas of the deep ocean floor and contain four elements of commercial significance: manganese, nickel, cooper and cobalt. It is considered that, within a relatively short period of time, some of the more developed countries will have the technological capability to extract and process these nodules for commercial purposes. Since it is expected that nodules will be mined primarily for their nickel content, and since Canada is the world's major producer and exporter of nickel, it is evident that this new source cannot be ignored by Canada. It would, therefore, seem to be clearly within Canada's national interest, not only to promote the establishment of an orderly regime in the area for the benefit of mankind in general and of developing countries in particular, but also to see that Canadian economic interests are protected.

In 1970, the General Assembly of the United Nations adopted a resolution calling for a moratorium on all exploration and exploitation activities in the international seabed area. As that resolution implied that no activity of any sort, even exploratory or experimental work, could be carried out in the area prior to the establishment of a permanent regime, Canada along with most developed countries abstained on the resolution, since it seemed to restrict unduly scientific and technological progress and could have resulted in an unacceptable delay in making these resources available to all.

Since then, and in spite of the moratorium resolution, a number of technologically-advanced countries have undertaken exploration activities in the international area, and a number of American companies are now said to be ready to move within two or three years to the exploitation stage. These activities have led to strong criticism on the part of the developing countries. The United States have also put forth a proposal for putting into force, immediately following agreement on the seabed issue at the forthcoming Law of the Sea Conference, and without awaiting necessary ratifications, the new regime in a provisional form so that the entrepreneurs can initiate exploitation without delay.

While it is generally agreed that a new International Authority should be established to govern activities in the international area, serious difficulties have been encountered as regards the powers to be given to this body. Developing countries are insisting that all activities in the area, including scientific research, be conducted solely by the Authority through a subsidiary organ they call the Enterprise. However, they now recognize that the high cost of seabed exploration and exploitation would necessitate engaging in joint ventures, service contracts or production-sharing arrangements with contracting states or their nationals. Several developed countries for their part prefer a licensing scheme whereby exploration and exploitation would be undertaken by contracting states and their nationals under license from the Authority. Canada has recognized the necessity of compromise in this delicate issue and has proposed a system involving a mix of licensing as well as activities contracted by the Authority, including the possibility of direct exploration and exploitation by the Authority itself when it acquires the means to do so.

It is important that Canada continue to work towards the establishment of a rational regime for the exploration and the exploitation of the resources of the international area. This regime, which must ensure that the utilization of these resources will be of benefit to mankind, should also provide opportunities for Canada's minerals industry to develop and be protected against the undesirable effects that the substantial increase in the production of certain minerals could have on its own position.

Conclusion

To be successful, the Third Law of the Sea Conference must reconcile the conflicting interests of participating nations. Clearly, this involves compromises in order to open the way to a viable and long-lasting constitution of the oceans. Canada has entered these negotiations with a view to achieving such an agreement, remaining conscious at all times of its own national requirements, as well as of the broader interests of mankind as a whole.

West Coast Tankers Simulation Game

WEST COAST TANKERS SIMULATION

GUIDE

The Canadian and United States Governments are discussing a variety of issues relating to the proposal to supply U.S. refiners with oil from the Alaska pipeline. This exercise is designed to demonstrate the complex nature of negotiations with the United States on a question of concern to many different interest groups in each country. It should be emphasized that the issues and viewpoints discussed have been greatly simplified and thus inevitably represent a distortion of reality. This exercise is designed only to illustrate the mechanisms of foreign policy and should not be taken as an evaluation or statement on the issue by the Government of Canada.

The exercise simulates a period of negotiations and decision-making, divided into "phases". Participants are divided up into groups representing governments and non-governmental interests, who interact to produce decisions on various aspects of the West Coast Tankers question. The goal structure allows each group to measure its success.

PREPARATION

For the purposes of the simulation, the class or group is divided into nine sections:

Canadian Government
B.C. Government
B.C. Environmentalists and Fishermen
B.C. Indians
Oil Companies (multinational)
Washington State Environmentalists and Fishermen
U.S. Shipowners
Washington State Government
United States Govenrment

The sections do not have to be of the same size. The division into groups should be carried out the day before the simulation is to be played out. Participants should be given the "Background" paper (Sheet 1), including the map and decision table, to study overnight. They should reach the background information and "psyche" themselves into the mentality of their particular group, noting especially its aims and attitudes. They should be generally familiar with the issue, but need not memorize details. The coordinator, on the other hand, will be asked all the tricky questions, and should therefore be fully familiar with both the background and the rules.

ORDER OF PLAY

On the day of the simulation, the room should be divided into 9 "headquarters", one for each interest group or government, with an open space in the middle of the room. Participants should be supplied with simple paper badges denoting their group. The coordinator should then review the background briefly. Next, he should hand out cards to each group showing the exact goals and powers of that group, taken from Sheet 2, "Goals and Powers". The goals are represented by points which will be awarded at the end of the exercise to each group, if certain decisions are or are not made. Governments have not been given goals in areas where they have the power to make the decision, but they do get points based on the "approval" of their electorate as reflected at polls at the end of each phase.

The coordinator should next hand out Sheet 3, "Rules to Remember", and explain about decision-making. Decisions are made by governments in various combinations summarized on the decision table; all the governments mentioned in connection with a certain decision must agree on that decision before it is final. Decisions can be reversed by one or more of the governments changing its mind. Decisions can also be made part of a "package", to come into effect only if other decisions are also agreed. No decisions can be made in the first phase. (This gives participants time to "settle in".) The non-governmental interest groups cannot force the governments to consider proposals, but they can organize, lobby the governments, and bring pressure to bear through their votes in the opinion polls.

The coordinator then explains the way the exercise will proceed, using Sheet 4, "Order of Play" and Sheet 5, "Voting". Groups should then be allowed to caucus for 5-10 minutes with other members of their group at their headquarters. This time should be used to agree on a strategy of contact with other groups, lobbying and negotiation. Play then proceeds as follows:

(a) The oil companies are called upon to initiate any of the pipeline proposals they favour. At the beginning, none are on the table, and only the oil companies can initiate these proposals. (1 minute)

(b) Other interest groups and governments can, if they wish, make brief (15-20 seconds) announcements of their position on various issues. (3 minutes)

(c) A period of lobbying follows. Participants may leave headquarters to talk to participants in other groups, attempting to persuade each other as to what should be done. Discussion may be held in public or private. (5 minutes)

(d) The two federal governments negotiate with each other, in private. (3 minutes) Other groups can caucus or lobby.

(e) Each government may caucus if desired and then make public announcements regarding bilateral agreements, or decisions to approve new ports or pipelines. (3 minutes)

(f) All groups may caucus and lobby. They then vote in the following order: B.C. poll, Washington State poll; Canadian poll; U.S. poll. Voting may be by voice or by secret ballot. (5 minutes)

This represents one phase; the process is then repeated as often as desired.

At the end of the exercise the total polling result for each government is added up and divided by 2.5 times the number of phases. This represents the government's "approval" score. The total point-score of each group is then determined by referring to Sheet 2. The maximum possible score for each group is 50 points.

BACKGROUND

As a result of the Canadian phase-out of crude oil exports to the United States, Washington State oil refiners have over the past few years increasingly relied on sea-borne delivery of Indonesian and Middle East petroleum supplies. When the Alaska pipeline comes on-stream late this year, a substantial portion of the foreign oil supplies will be replaced with shipments of Alaskan crude oil. Even so, with the Alaskan fields producing at the economically necessary minimum rate, there will be a surplus of crude oil in the U.S. west coast which could amount to 600,000 barrles per day by next year. The oil could be used by U.S. refiners in the "Northern tier" of states (chiefly Washington, Idaho, Montana, North Dakota and Minnesota), who are also being phased out of Canadian supplies.

Several proposals have been made for constructing the necessary pipeline link between the west coast and these refiners. Chief among these are:

(a) the proposal for an oil port at Kitimat, B.C., with a pipeline connection to the existing western Canada/Northern tier distribution system at Edmonton;

(b) the Northern tier proposal, which envisages an oil port in the Juan de Fuca/Puget Sound area and a pipeline stretching across the northern states as far east as Minnesota; and

(c) the Transmountain Reversal option, which envisages supply of the Northern tier by off-loading the oil in Washington State and transmitting it to the existing distribution system through part-time reversal of the underutilized Transmountain pipeline from Edmonton. (see map)

The Kitimat and Transmountain options are both "short-term" options, and only one of them can be built, but the Northern tier pipeline is "long-term" and could be built in addition to one of the two other options.

The current oil terminal for Washington State is Cherry Point, which is approached through the Strait of Juan de Fuca and the San Juan Islands, which form part of the Canada-United States border. (see map) The suggestion has been made to move the terminal to Port Angeles, which would eliminate the tricky passage through the San Juans, but raise the cost of oil to U.S. consumers.

On many occasions beginning in 1971, the Canadian Government has expressed its strong concern over large-scale tanker movements in the Juan de Fuca/ Puget Sound area. U.S. authorities have been informed that Canada

anticipates major damage to Canadian wildlife, fishing and lumber industries, shore property and recreational facilities from any oil spill in the area, whether in U.S. or Canadian waters. In May 1972, the House of Commons passed a resolution declaring the movement of Alaskan oil along the B.C. coast to be "inimical to Canadian interests". The matter was raised repeatedly during contacts between Canadian and U.S. Cabinet members, including Prime Minister Trudeau's talks with President Ford in December 1974 and (in more general terms) those with President Carter in February 1977. Canada cannot, however, take unilateral action to regulate this oil traffic, since tankers could proceed from the high seas to ports entirely through U.S. waters. U.S. and Canadian authorities therefore met in August 1974 at Canadian initiative, and agreed to discuss plans for reducing the environmental risk to the Juan de Fuca area.

Discussions now involve three major areas:

(a) discussion on the impact for Canada of the various port and pipeline options;

(b) an oil spills package, including agreements on joint oceanographic research, on mechanisms for compensation to people suffering damage from oil spills, and on an oil spills contingency plan designed to coordinate the cleanup operation of the two countries; and

(c) a safety package, particularly a vessel traffic management (VTM) system (like an air traffic control system) for all ships in the Strait; there is some debate as to whether this agreement should include tougher safety standards (which would be expensive for shipowners) or simply the standards now in force in one country or the other.

The U.S. Government and oil interests are anxious to get some supply system in place as rapidly as possible, as Canadian oil is expected to be completely phased out by 1981. The proponents of the environmental protective package wish to see it in place by the time that Alaskan oil begins to move through the Straits of Juan de Fuca. Major decision in both areas are expected by the end of 1977 or early 1978.

The attached table summarizes the main decisions which have to be taken:

(a) which pipeline proposal (if any) to approve;

(b) whether to switch the Washington State port from Cherry Point to Los Angeles;

(c) whether to conclude an oil spills package; and

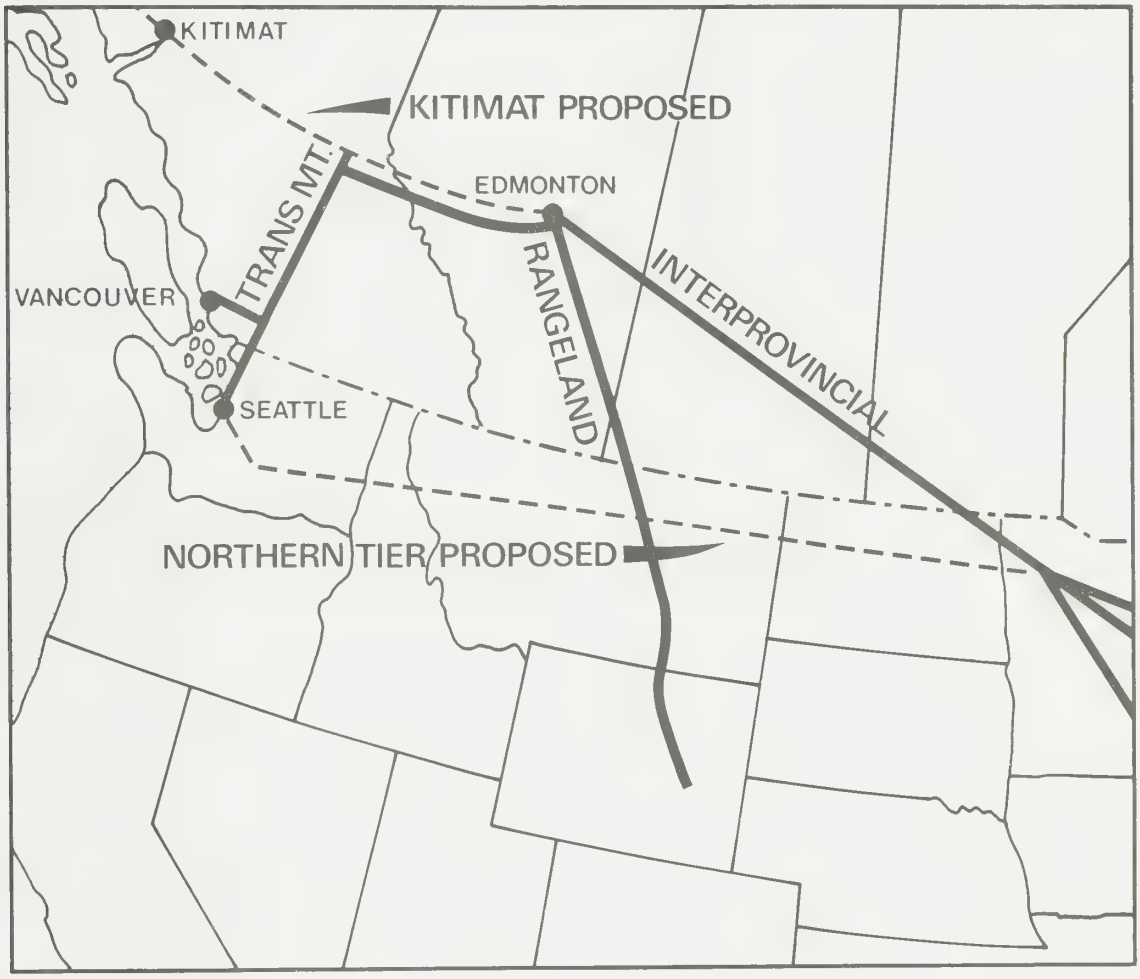
(d) whether to conclude a "tough" or "regular" VTM agreement (if either).

The table gives the governments which all have to agree before the decision is made, and the groups who are for and against each proposal. The nine groups involved are:

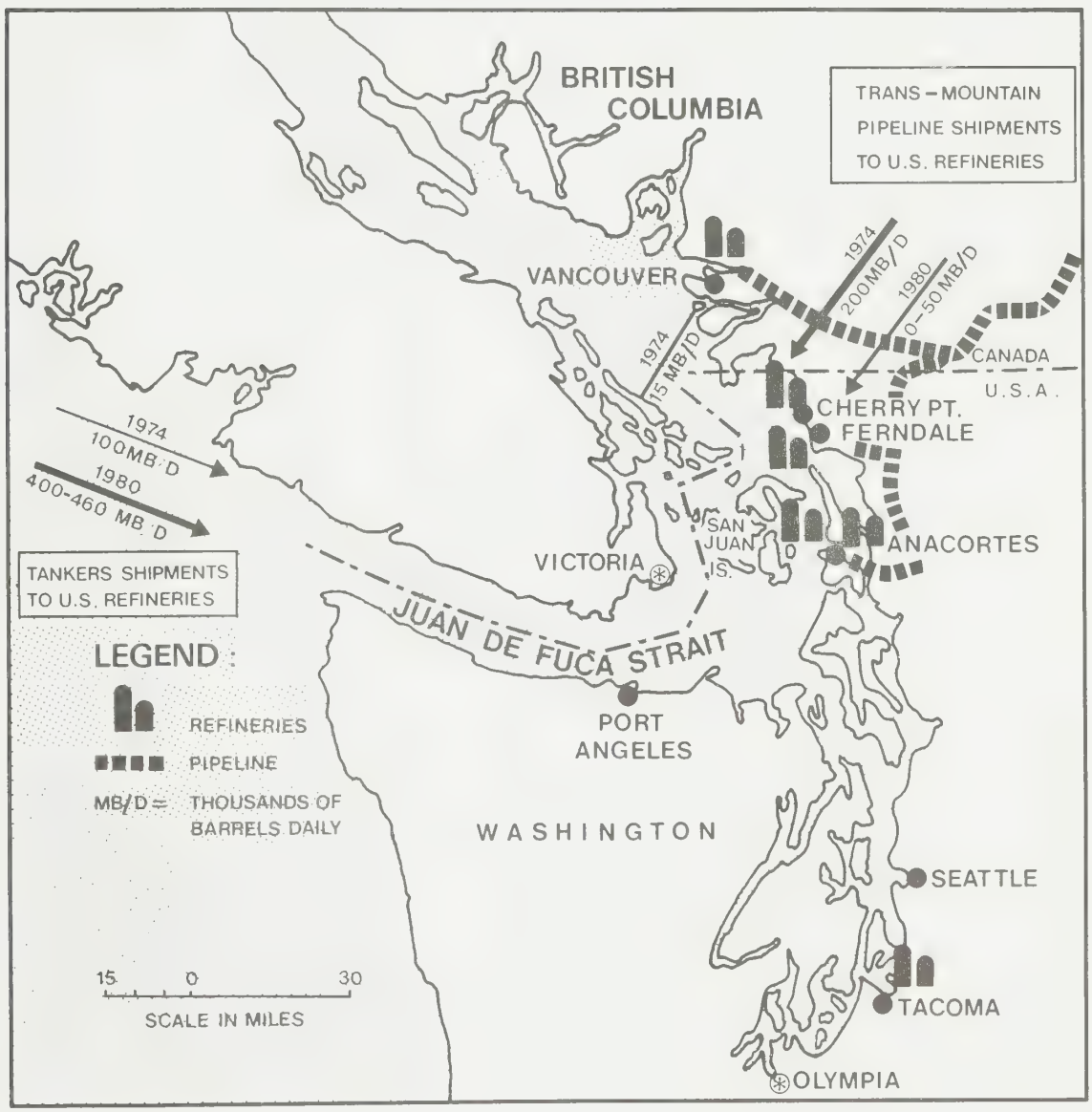
Canadian Government
B.C. Government
B.C. Environmentalists and Fisherman
B.C. Indians
Oil Companies (multinational)
Washington State Environmentalists and Fishermen
U.S. Shipowners
Washington State Government
United States Government

Each group has different goals relating to specific decisions, and the governments are also seeking the approval of other groups in their consituencies. The non-governmental interest groups cannot force the governments to take decisions, but they can organize, lobby and exert pressure through their votes in periodic "opinion polls".

PRESENT & PROPOSED WEST COAST OIL PIPELINES — MAP 1



JUAN DE FUCA – PUGET SOUND AREA MAP 2



DECISION TABLE				
DECISIONS	Options	Decisions made by:	Parties for:	Parties Against:
PIPELINE	Kitimat	Canada	Oil, Shipping, USA	B.C. env.& fishermen Indians, Washington
	Transmountain	Canada, Washington	Oil, Shipping, USA Washington	Indians U.S. env.& fishermen B.C. env.& fishermen
	Northern tier	USA, Washington	Oil, Shipping, USA Washington	Indians U.S. env.& fishermen B.C. env.& fishermen
REPLACEMENT OF CHERRY POINT BY PORT ANGELES		USA, Washington	B.C., Canada, B.C. env.& fishermen	Oil, Washington State
OIL SPILLS AGREEMENT		Canada, USA	Indians Canada, USA, B.C., both env.& fishermen	
VESSEL TRAFFIC MANAGEMENT AGREEMENT	either kind	Canada, USA	B.C., Washington	
	regular	Canada, USA	USA	
	tough	Canada, USA	Canada, Indians both env.& fishermen	Oil, Shipping

GOALS AND POWERS 2

CANADIAN GOVERNMENT:

(A) Goals:

6 points if traffic in Cherry Point is replaced by Port Angeles (less environmental risk)

4 points for an oil spills agreement (protection)

6 points for a regular VTM agreement (protection)

10 points for a tough VTM agreement (higher standards)

up to 30 points for approval (see below)

(B) Voting Powers:

up to 6 votes in B.C. poll

up to 4 in U.S. poll

(C) Decision-making Powers:

Kitimat (alone)

Transmountain (with Washington)

oil spills and VTM agreements (with U.S.A.)

B.C. GOVERNMENT:

(A) Goals:

8 points if traffic in Cherry Point is replaced by Port Angeles (less environmental risk)

5 points for an oil spills agreement (protection)

7 points for a tough, 5 points for a regular VTM agreement (protection)

up to 30 points for approval (see below)

(B) Voting Powers:

up to 4 votes in Canadian poll

Copy and distribute appropriate section
to each group

B.C. ENVIRONMENTALISTS AND FISHERMEN:

(A) Goals:

10 points for each pipeline not agreed

10 points if Port Angeles replaces Cherry Point (less environmental risk)

4 points for an oil spills agreement (protection)

3 points for a regular VTM agreement (protection)

6 points for a tough VTM agreement (higher standards)

(B) Voting Powers:

up to 20 votes in B.C. poll

up to 5 in Canadian poll

B.C. INDIANS:

(A) Goals:

20 points if Kitimat proposal not agreed (risk to native fisheries and property)

10 points each if Northern tier and Transmountain are not agreed (damage to native property)

5 points for oil spills agreement (protection)

5 points for tough VTM, 3 points for regular (protection)

(B) Voting Powers:

up to 9 votes in B.C. poll

up to 5 in Canadian poll

OIL COMPANIES:

(A) Goals:

15 points if Transmountain proposal agreed (fastest and cheapest)

10 points if Kitimat proposal agreed (faster and cheaper than Northern tier)

20 points if Northern tier proposal agreed (most expensive and longest contruction time, but "All-American" route)

10 points if Port Angeles does not replace Cherry Point (increased expense of oil)

5 points if a tough VTM agreement is not concluded (increased expense of shipping)

(B) Voting Powers:

up to 10 votes in B.C. poll

up to 7 in Canadian poll

up to 12 in Washington State poll

up to 7 in U.S. poll

WASHINGTON STATE ENVIRONMENTALISTS:

(A) Goals:

15 points each if the Transmountain and the Northern tier are not agreed (feel neither are worth the environmental risk)

10 points if Port Angeles replaces Cherry Point (less environmental risk)

4 points for an oil spills agreement (protection)

3 points for a regular VTM agreement (protection)

6 points for a tough VTM agreement (higher standards)

(B) Voting Powers:

up to 16 votes in Washington State poll

up to 5 in U.S. poll

U.S. GOVERNMENT:

(A) Goals:

10 points if any pipeline proposal is agreed (energy needs of the nation)

4 points for an oil spills agreement (protection)

6 points for a regular VTM agreement (protection)

3 points for a tough VTM agreement (feel U.S. standards are sufficient)

up to 30 points for approval

(B) Voting Powers:

up to 7 votes in Washington State poll

up to 4 in Canadian poll

(C) Decision-making Powers:

Northern tier pipeline and Port Angeles option (with Washington)

oil spills and VTM agreement (with Canada)

U.S. SHIPPING INTERESTS:

(A) Goals:

25 points if any pipeline proposal is agreed (increased use of U.S. ships)

25 points if a tough VTM agreement is not concluded (increased costs)

(B) Voting Powers:

up to 10 votes in Washington State poll

up to 5 in U.S. poll

WASHINGTON STATE GOVERNMENT:

(A) Goals:

10 points if Northern tier is agreed (more business for the state ports and construction companies)

7 points if Transmountain is agreed (more business for state's posts). NOT APPLICABLE IF NORTHERN TIER ALSO AGREED.

4 points if Cherry Point is not replaced by Port Angeles (local residents opposed)

2 points for an oil spills agreement (protection)

4 points for either kind of VTM agreement (protection)

up to 30 points for approval

(B) Voting Powers:

up to 7 votes in U.S. poll

(C) Decision-making Powers:

Transmountain pipeline (with Canada)

Northern tier pipeline with Port Angeles option (both with U.S.A.)

RULES TO REMEMBER 3

(1) Only the oil companies can propose a pipeline. Anyone can propose anything else.

(2) Nothing can be decided in the first phase.

(3) You can't agree on both Kitimat and Transmountain pipelines, but you can combine one with the Northern tier pipeline.

(4) All of the governments mentioned in the Decision Table beside each decision must agree on that decision before it is final.

(5) Any of the governments involved can reverse a decision later by withdrawing its support. It can also threaten to do so.

(6) You are free to take any position you want on any issue, but you will only get points at the end of the game if certain decisions are taken or blocked.

Copy to each group

ORDER OF PLAY 4

Each phase is made up of:

(1)	Announcements by oil companies	(1 minute)
(2)	Announcements by other groups and governments- no more than 20 seconds each	(3 minutes)
(3)	Lobbying-groups talk to each other and to governments	(5 minutes)
(4)	Negotiations between two federal governments; other groups lobby or caucus	(3 minutes)
(5)	Caucus and public announcements by governments on their decisions	(3 minutes)
(6)	Caucus by groups and voting	(5 minutes)

VOTING 5

The means by which the interest groups can pressure the various governments is a threat of withholding support in "popularity polls". At the end of each phase, a government's constituents vote on how successful they feel the government has been in representing their interests.

Each interest group has a certain maximum number of "votes" it can cast in each poll, reflecting its influence (see below). It can choose to give all of the votes to a government (reflecting full support), or some, or none (reflecting total opposition). The oil companies can "vote" in all elections. Provincial and state governments can cast a "vote of approval" in their countries' federal polls and vice versa. The federal governments have a small "vote of approval" in each other's polls reflecting the desire to maintian friendly external relations. There is also in each poll a "pad" of extra votes going to the government regardless of the voting, representing support from sections of the electorate with no opinion on the issue. It is larger for federal governments than for state or provincial, since the nation as a whole has a larger bulk of non-concerned citizens.

The maximum votes making up each election are as follows:

B.C. Polling:

B.C. environmentalists and fishermen	20
Oil Companies	10
B.C. Indians	9
Canadian Government	6
Outside vote	30
	75

Washington State Polling:

Washington environmentalists and fishermen	16
Oil Companies	12
Shipowners	10
U.S. Government	7
Outside vote	30
	75

Copy to each group

Canadian Polling:

Oil Companies	7
B.C. environmentalists and fishermen	5
B.C. Indians	5
B.C. Government	4
U.S. Government	4
Outside vote	50
	75

U.S. Polling:

Oil Companies	7
U.S. shipowners	5
Washington environmentalists and fishermen	5
Washington Government	4
Canadian Government	4
Outside vote	50
	75

NINE IDENTIFICATION TABS
FOR THE TANKER SIMULATION GAME
LAW OF THE SEA

NEUF FICHES D'IDENTITE
POUR LE JEU NAVIRES CITERNES
DE LA COTE OUEST SIMULATION
DROIT DE LA MER

Gouvernement de l'Etat de Washington

Washington State Government

Écologistes et
pêcheurs
de la Colombie
Britannique

B.C.
Environmentalists
and
Fishermen

Les Indiens de la Colombie Britannique

B.C. Indians

Canadian
Government

Le gouvernement
du Canada

Le gouvernement
de la
Colombie Britannique

B.C. Government

Armateurs
américains

U.S. Shipowners

Gouvernement
des Etats-Unis

United States
Government

Écologistes et pêcheurs de l'Etat de Washington

Washington State Environmentalists and Fishermen

Sociétés pétrolières
(multi nationales)

Oil Companies